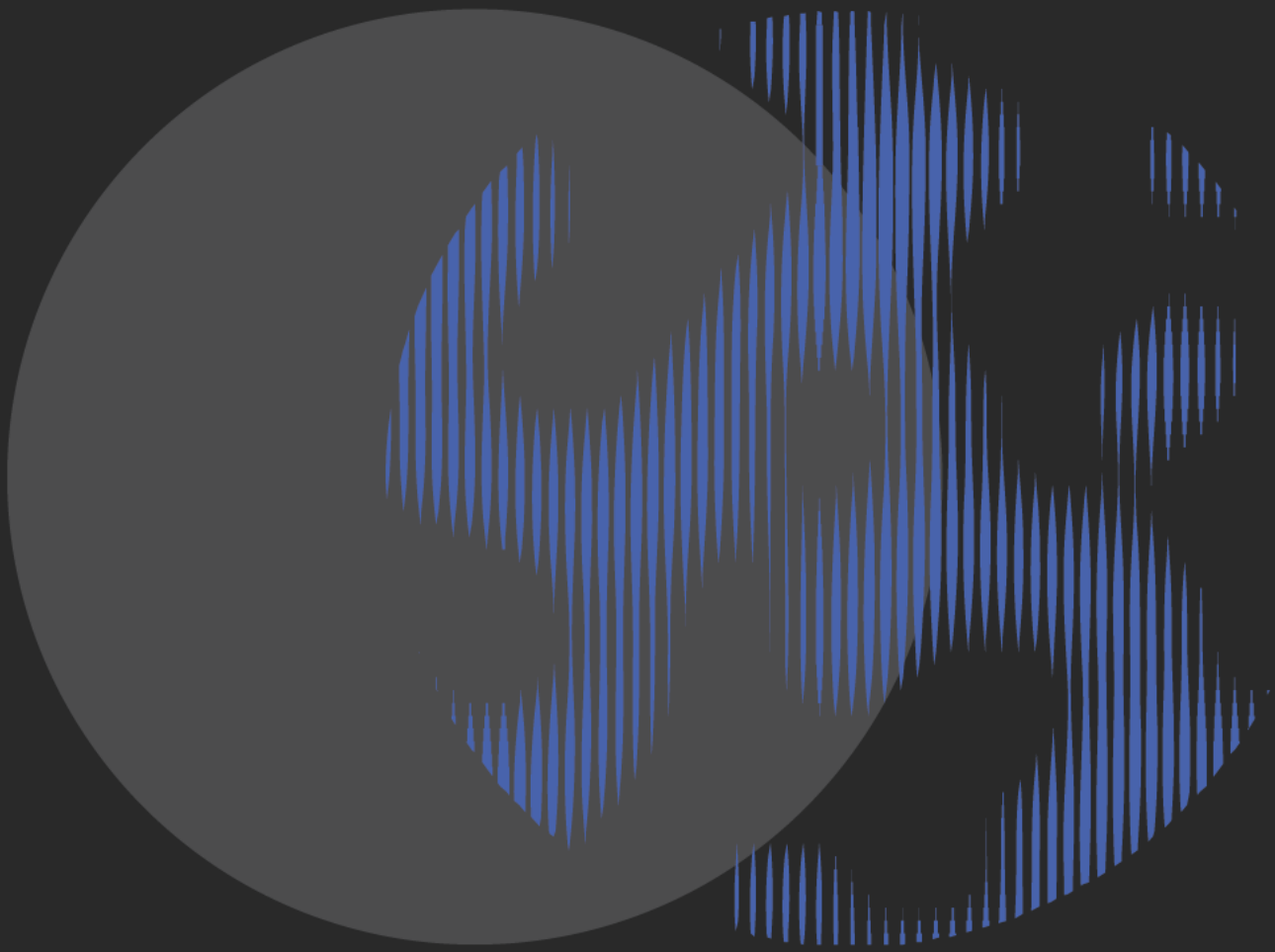
Human Technology
Institute



Submission to the OAIC Issues Paper, *Automated Decision-Making Transparency Obligation (APP 1)*

June 2026

The Human Technology Institute (HTI) is building a future that applies human values to new technology. HTI embodies the strategic vision of the University of Technology Sydney (UTS) to be a leading public university of technology, recognised for its global impact specifically in the responsible development, use and regulation of technology. HTI is an authoritative voice in Australia and internationally on human-centred technology. HTI works with communities and organisations to develop skills, tools and policy that ensure new and emerging technologies are safe, fair and inclusive and do not replicate and entrench existing inequalities.

The work of HTI is informed by a multi-disciplinary approach with expertise in data science, law and governance, policy and human rights.

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Acknowledgement of Country

UTS acknowledges the Gadigal people of the Eora Nation, the Boorooberongal people of the Dharug Nation, the Bidiagal people and the Gamaygal people upon whose ancestral lands our university stands. We would also like to pay respect to the Elders both past and present, acknowledging them as the traditional custodians of knowledge for these lands.

Executive summary

The UTS Human Technology Institute (HTI) welcomes the opportunity to respond to the Office of the Australian Information Commissioner's (OAIC) Issues Paper, *Automated Decision-Making Transparency Obligation (APP 1)* (the Issues Paper). HTI supports the need for clear guidance for entities subject to the Australian Privacy Principles (APP) as they navigate the automated decision-making (ADM) transparency obligations that commence on 10 December 2026.

Transparency in the operation of ADM systems is not, on its own, sufficient to ensure those systems operate in a trustworthy manner. However, it is one of a number of vital preconditions to more trustworthy ADM systems. Greater openness fosters individual agency in choosing whether or how to interact with an entity that engages in ADM, and supports accountability where a decision is problematic. Compliance with the new obligations should not be merely an exercise in box-ticking, but represent a genuine opportunity for APP entities to foster the integrity of systems that can have significant effects on individuals' lives. Precise, coherent guidance will support entities to do this.

In this short submission, HTI makes the following recommendations:

Recommendation 1
OAIC guidance should make clear that the term 'substantially and directly related' to making a decision includes situations where an automated system produces an inference, prediction or recommendation that a human relies on in making a decision.

Recommendation 2
HTI endorses the OAIC's proposed list of factors to guide APP entities in considering whether a decision is likely to affect an individual's rights or interests. An additional factor would be where a decision-making system automates the exercise of discretion or an evaluative judgment.

In addition, the OAIC guidance should also make clear that 'sensitive information' can be inferred from non-sensitive information.

Recommendation 3
The OAIC guidance should align with key definitions in legislation being prepared by the Attorney-General's Department to establish a framework for the operation of automation in government services.

Recommendation 4
The OAIC should adopt the definition of 'decision' provided in s 9 of the *Administrative Review Tribunal Act 2024* (Cth). For the avoidance of doubt, OAIC guidance should note that:

(i) the use of automation will not deprive an action of the character of a 'decision', which includes wholly and partly automated decisions;
(ii) a 'decision' includes steps taken in preparation for making a decision, where those steps will have a significant effect on the ultimate decision.

Question 1: Meaning of '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?

HTI supports a targeted application of APP 1.7 through the adoption of clearly-defined parameters for what will trigger disclosure under APP 1.8. The cost of compliance will be minimised for APP entities, by adopting the framing in the OAIC FOI Guidelines of 'real or of substance and not insubstantial or nominal'.

HTI supports the inclusion of a non-exhaustive list of factors an APP entity should consider in determining whether, in the circumstances of the computer program in question, APP 1.7 applies. The factors listed by the OAIC in Question 1 of the Issues Paper could all be relevant in determining what is 'substantially and directly related' to a decision.

HTI does not consider it necessary for the guidance to rank relevant factors, as much will depend on the context, process and outcome of the decision-making process. To that end, the degree of reliance on an ADM system output, the ability and likelihood of human override over an ADM decision and the nature of the output – whether advisory or determinative – are all relevant in assessing whether a computer program substantially facilitates and is directly related to making a decision. The way in which ADM is integrated into a decision-making workflow is also germane, and will likely be captured in an analysis of the degree of reliance on the ADM system output and likelihood of human override.

In addition to the factors listed in the Issues Paper, it would be helpful for OAIC guidance to state expressly that, where a human decision-maker makes a decision in reliance on an inference, prediction or recommendation derived via an ADM process, this decision is likely to be considered an ADM decision.

Recommendation 1
OAIC guidance should make clear that the term 'substantially and directly related' to making a decision includes situations where an automated system produces an inference, prediction or recommendation that a human relies on in making a decision.

Question 4: Factors to consider in determining whether the use of ADM '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.

HTI supports the OAIC's approach of drawing on relevant Australian, EU and UK legislation to provide a clear definition of when the decision could reasonably be expected to significantly affect the rights or interests of an individual. As the Issues Paper observes, the term 'rights or interests' has been interpreted broadly in Australian law. It has a meaning that is consistent with decisions with 'legal or similarly significant

effect', as that term is used in the European Union's *General Data Protection Regulation* (GDPR). Adopting the same, or a sufficiently similar, definition will provide those APP entities already subject to the GDPR with regulatory certainty, likely reducing the cost of compliance.

HTI endorses the list of factors that the Issues Paper identifies as indicative of the likelihood a decision will affect an individual's rights or interests.

Recent history shows how vulnerable and marginalised populations can face heightened risk of harm from ADM systems, and the particular needs of these groups should be considered when determining whether an ADM system could have 'significant' effects on rights or interests.[1] For example, at-risk cohorts are more likely to be under-represented or over-represented in training data for automated systems that use artificial intelligence (AI), which can lead to inaccurate and in some cases discriminatory outputs that disproportionately affect those demographic groups.[2]

Good socio-technical systems, with strong oversight (where appropriate, by humans) can address this issue. However, the mere presence of a human decision maker 'in the loop' is not a perfect protection against these sorts of problems: a person who draws on machine-generated outputs may not have the awareness, authority or inclination to challenge biased results.

As also noted in the Issues Paper, the type of information being processed using ADM, and the use case, are also relevant when considering whether that process may significantly affect people's rights or interests. Inputs comprising sensitive information – including information about protected attributes, health, or personal finances – increase the likelihood that the decision could affect an individual's rights or interests. ADM processes that incorporate some biometric information – a type of sensitive information – pose particular risks to people's rights and interests. Facial recognition technology (FRT), for example, draws on biometric data that contains information about individuals, including relating to protected attributes such as sex, age, race and disability status. Because faces are 'public', they can be captured or surveilled without an individual's awareness, let alone consent. The use of biometric data in ADM systems can enable deployers of those systems to infer, or try to infer, highly personal information about individuals, which can be used to make legal and similarly significant decisions about those individuals.

The guidance should also clarify that while 'sensitive information' is a relevant factor in determining the likelihood a decision will affect an individual's rights or interests, it should be borne in mind that some AI tools process information by categorisation and inference – enabling sensitive information to be derived from non-sensitive personal information, such as IP addresses and device identifiers. It will be important for APP entities to be transparent about both types of automation: where sensitive information is incorporated in the decision-making process, and where sensitive information is being inferred from non-sensitive information.

HTI also recommends the guidance clarify that certain uses of ADM are more likely to significantly affect the rights or interests of individuals. For example, the use of ADM systems in discretionary decision making – which necessarily involves nuanced, individualised assessments to avoid potentially unfair outcomes of applying rigid rules – has outsized potential to affect the rights and interests of vulnerable individuals. HTI has previously warned generally against the use of ADM for discretionary decision-making processes, or where there is a likelihood that ADM will narrow the exercise of discretion. An exception to this principle is the automation of discretion in

circumstances that clearly uphold human rights, such as to expedite disaster-relief payments in an emergency – and only then with appropriate safeguards.[3]

Recommendation 2
HTI endorses the OAIC's proposed list of factors to guide APP entities in considering whether a decision is likely to affect an individual's rights or interests. An additional factor would be where a decision-making system automates the exercise of discretion or an evaluative judgment.

In addition, the OAIC guidance should also make clear that 'sensitive information' can be inferred from non-sensitive information.

Question 7: Other legal frameworks or policies

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

HTI recommends the OAIC align the guidance with the proposed legislation for automated decision-making in government, currently being prepared by the Attorney-General's Department.[4] Adopting the same core definitions and requirements relevant to transparency across both frameworks will benefit APP entities subject to both regimes, promoting regulatory coherence and reducing compliance burdens.

Recommendation 3
The OAIC guidance should align with key definitions in legislation being prepared by the Attorney-General's Department to establish a framework for the operation of automation in government services.

Question 10: Meaning of 'making a decision'

HTI recommends the guidance provide clarity for entities regarding what 'making a decision' refers to, including by reference to administrative law.

HTI does, however, note there is some ongoing legal uncertainty regarding whether automated decisions are 'decisions' for the purposes of the *Administrative Decisions (Judicial Review) Act 1997* (Cth) due to the majority decision of the Full Federal Court in *Pintarich v Deputy of Commissioner of Taxation*.[5]

There would be value in addressing this uncertainty through legislation.[6] In the absence of such clarification, HTI proposes that the OAIC take an expansive approach in its guidance to APP entities, and note for the avoidance of ambiguity that 'decision' includes fully automated decisions.

Recommendation 4
The OAIC should adopt the definition of 'decision' provided in s 9 of the *Administrative Review Tribunal Act 2024* (Cth). For the avoidance of doubt, OAIC guidance should note that:

(i) the use of automation will not deprive an action of the character of a 'decision', which includes wholly and partly automated decisions;
(ii) a 'decision' includes steps taken in preparation for making a decision, where those steps will have a significant effect on the ultimate decision.

Question 12: Extent of disclosure

HTI supports the OAIC approach regarding the extent of disclosure to ensure compliance with APPs 1.7-1.9. Individuals need sufficient meaningful and accessible information to understand the use of their personal information by APP entities. This, in turn, will enable them to exercise their rights in relation to outcomes. This transparency will also assist courts and regulators to review decisions.

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[1] Royal Commission into the Robodebt Scheme, Final Report (July 2023) xxiii.
[2] Virginia Eubanks (2018). *Automating inequality: how high-tech tools profile, police and punish the poor* (First Edition.). St. Martin's Press.
[3] Human Technology Institute, submission to the Attorney-General's Department, *Use of Automated Decision-Making by Government*, 28 January 2025 https://www.uts.edu.au/globalassets/sites/default/files/2025-01/HTI-submission-Use-of-ADM-by-Government.pdf.
[4] Attorney-General's Department (Cth), *Use of Automated Decision-Making by Government: Consultation Paper* (Consultation Paper, November 2024).
[5] *Pintarich v Deputy Commissioner of Taxation* [2018] FCAFC 79.
[6] Human Technology Institute, submission to the Attorney-General's Department, *Use of Automated Decision-Making by Government*, 28 January 2025 https://www.uts.edu.au/globalassets/sites/default/files/2025-01/HTI-submission-Use-of-ADM-by-Government.pdf.