Office of the Australian Information Commissioner
Via email – privacyreformtranche1@oaic.gov.au

15 June 2026

To the Office of the Australian Information Commissioner,

Automated Decision-Making Transparency Obligation (APP 1) – Issues paper

ENGIE Australia & New Zealand (ENGIE) appreciates the opportunity to respond to the Office of the Australian Information Commissioner (OAIC) on its development of guidance on the upcoming automated decision-making (ADM) transparency obligation.

The ENGIE Group is a global energy operator in the businesses of electricity, natural gas and energy services. In Australia, ENGIE operates an asset fleet which includes renewables, gas-powered generation, and battery energy storage systems. ENGIE also provides electricity and gas to retail customers across Victoria, South Australia, New South Wales, Queensland, and Western Australia.

ENGIE operates within highly regulated retail energy markets and is subject to extensive oversight from multiple regulators across several jurisdictions in Australia. Privacy considerations are embedded in the delivery of ENGIE's services, with the protection of personal information recognised as critical to maintaining customer trust and confidence. Accordingly, ENGIE supports the development of guidance to assist entities in complying with the ADM obligation from 10 December 2026.

However, ENGIE has several concerns around what is set out in the issues paper. Currently, there is potential for key terms within the ADM obligation to be broadly interpreted, creating uncertainty of the activities in scope. ENGIE is concerned this would lead to undue regulatory burden and disclosures in scenarios where there is little demonstrable benefit to customers or other individuals. Therefore, ENGIE asks that OAIC provide specific guidance that is harm-led and proportional to assist entities in assessing whether edge cases fall within the scope of guidance requirements.

Accordingly, ENGIE proposes the following two high-level suggestions to improve the practicality of the ADM obligation for industry:

1. Clarify the scope and application of supply chain depth

ENGIE requests that OAIC make clear that APP 1.7 to 1.9 obligations are confined to ADM arrangements and operational activities within an entities' control, including those delivered through third parties. These

obligations should not be interpreted as extending to every underlying or downstream technical function, which would be impractical to manage.

2. Provide additional guidance on OAIC's approach towards enforcement – that good-faith efforts to identify and disclose ADM focused on harm-based disclosure supports meeting compliance with the Privacy and Other Legislation Amendment Act 2024.

As a business that operates in a heavily regulated sector both internationally and in Australia, ENGIE already possesses a strong risk management framework. Businesses like ENGIE should be focused on a structured, harm-prioritised scoping effort and harms-based disclosure to fulfill the obligation.

In the remainder of this submission, ENGIE provides additional feedback to some of the consultation questions listed in the issues paper below:

Substantially and directly related to making a decision

Question 1

ENGIE would appreciate more detailed guidance on the meaning of 'substantially' in the context of an entity making a decision. The issues paper and Explanatory Memorandum appear to take a very broad interpretation of the term 'substantially' and includes any guidance or filtering of information from a computer program if this is used as an input by the human decision-maker.

ENGIE contends that this would be too broad of an interpretation and the term 'substantially' should be limited to scenarios where a computer program provides determinative outputs that are directly connected to a human decision-maker's decision. ENGIE considers that advisory outputs are unlikely, in most instances, to be a substantial factor in a human decision-maker's decision, even when the output simplifies and makes the decision-making process more efficient.

Question 2

In relation to the fictional edge case, it would be interesting for the OAIC to explore a case where the AI makes recommendations based on whether the applications meet fixed eligibility criteria that are determined by human staff. In that case, ENGIE would consider that the use of AI with human oversight and decision-making would not meet the criteria for the computer program being substantially and directly related to making a decision. This is because the AI is effectively calculating the binary result of the application against the fixed eligibility criteria for a human to review and confirm. While this simplifies the decision-making process, it has no substantial impact on the human decision-maker's ultimate decision on eligibility.

ENGIE would also be interested in guidance on a similar scenario where AI is used to summarise candidate profiles or applications but does not provide any recommendations. In that scenario, the computer program has simplified the process of reviewing assessments but has not 'substantially' guided the human decision-maker's decision.

Meaning of significantly affect rights or interests

Question 3

In the context of the Australian retail energy market, ENGIE considers that a customer's level of vulnerability is the most important factor as to whether a decision could affect that person's rights or interests.

Question 4

In ENGIE's experience, there is no single customer archetype that can be used to pre-determine whether a customer will be affected by vulnerability. There will be some circumstances that may mean that a customer is more likely to be affected by vulnerability in the energy sector, including income levels, literacy and numeracy skills, and mental health outcomes. ENGIE also notes that some customers may experience short-term hardship (such as, due to a temporary loss of employment), while others experience more sustained hardship. The number of customers participating in energy retail hardship programs has increased significantly in recent years.

Question 5

ENGIE agrees that decisions related to 'access to essential utilities' and 'financial assistance' are relevant for the automated decision-making transparency obligation.

Question 6

No feedback.

Question 7

In relation to differential pricing, ENGIE notes that energy retailers do not supply electricity or gas at a single price for all customers. Energy retailers have a variety of energy plans that include different prices, pricing structures, and benefits that customers can choose from. To the extent that customers are charged different prices based on geographic location, this is driven by the differing costs that retailers incur to supply energy in different locations. For example, the distribution network costs incurred by an energy retailer may be noticeably different for a customer in Sydney CBD compared to a customer in the Brisbane CBD or in regional New South Wales.

Some customers may also be able to obtain exclusive pricing if they are members of specific organisations that are partnered with the energy retailer. For example, ENGIE provides an exclusive energy plan for 'My NRMA Rewards' members.

Although electricity and gas are essential services, ENGIE does not consider that the type of differential pricing noted above affects the rights and interests of customers. Energy retail customers retain access to

the publicly available energy plans from their current energy retailer and all other energy retailers that supply their geographic location.

Meaning of making a decision

Question 8

In relation to the fictional edge case, ENGIE notes that the firm did not expressly decide for the specific candidate to not receive the job posting. However, ENGIE agrees that the firm has made a 'decision' to promote their job postings in a specific way that means the probability of receiving the job posting will differ between each person.

Meaning of 'arranged for'

Question 9

As noted previously, ENGIE has concerns that the broad definition of 'arranged for' and 'computer program' creates uncertainty as to what is in scope for a disclosure. Further guidance is required as per the recommendations outlined to ensure that disclosures are relevant to the individual customer, rather than a technical scan of every downstream system.

Extent of disclosure

Question 10

In the context of an energy retail business, there will likely be many decisions made with the assistance of computer programs and potentially many types of computer programs that need to be listed and described. Considering the broad scope of the obligation, ENGIE is concerned that making these disclosures would impose a disproportionate compliance burden and may not deliver commensurate value for consumers. OAIC should, therefore, set a reasonable standard as to automated decisions that meaningfully contribute to decision-making so that entities can focus on automated decision-making that is impactful to individuals. ENGIE considers that providing examples of acceptable disclosures would help entities to understand the level of detail that the OAIC expects.

Concluding remarks

ENGIE welcomes further opportunities to engage with the OAIC and provide additional information on this submission. Should you have any queries in relation to this submission please do not hesitate to contact me on, telephone, [redacted].

Yours sincerely,

[redacted]

[redacted]

Regulatory Advisor

Manager, Regulation and Policy