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.	5 - Strongly Agree
Free text comments	Were it's higher stakes meaning more harm requiring human oversight or override is situations like employment as have read cases where an employee didn't engage with a human for the entire recruitment process. ADM cannot read a room or ask off the beaten track questions that may still help the candidate obtained the role that an ADM cannot do based on programmed language, hence judgement in this case is bias. Noticing big time is where ADM are used for say the cyber security industry that candidates must have CISSP, etc for a junior role as they require a number of years experience, but the HR person has knowledge.This creates bias based on a junior role cannot go and get a CISSP. This could also apply to rental properties were an ADM is used and be bias. Where less stakes would be for informational like a brochureware website, FAQ's, requires less need for a formal oversight architecture.

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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?	Even though AI does do the heavly lifiting of reviewing profiles which reduces time and effort, using AI heavily influences the ~~staff members making the decisions before they start to think. Just in the~~ same way as a teacher asks you to grade a classmates essay, but before you see it someone has already read it and handed you a summary plus a suggested grade. This has big impacts on the elderly who are in need of support and are vulnerable. Staff never get to see the full picture as AI is reliant on suggested algorithms. Elderley don't understand AI either and accountabilty then is on the staff that make the decision, not AI.

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.	5 - cannot undo decisions. Candian airlines is an example where AI gave instructions to a customer and the airline didn't want to take accountability, this impacted the customer as it was following the AI output. - access to services where anything gatekeeping to education, health,welfare - lack of transparancy around abilaity to understand or contest an AI decision especially for those that didn't grew up in a digital society. - Mention vulnerability person this can include those that have low literacy
Free text comments	~~- It's having impact not just single case, but impacting many individuals. Like~~ the example of applying for a cyber security role. There could be many potential junior candidates that could be interviewed and be acceptable, but because HR put in CISSP for a junior role many individuals are affected because AI was programmed to profile candiates with CISSP to be the top candidate.

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?	- Low literacy or low digital literacy - unable to navigate online systems, understand how to contest a decision, cannot respond effectively in the written process - Elderly people as they have greater dependency on services, less digital awareness, unable to differentiate between human response and decisions to AI making it more challenging to know when to contest a decision. - People experiencing illness including metal as it impacts their understand in the same way as mention for the elderly. Both groups depend on certain services. - People experiencing financial hardship not having the ability to contest like the Candian Airlines case where it went to court.

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.	5: critical would be aged care and disabilty support, child protection, healthcare and medical treatment, welfare support, and insurance as well (passenger could be in danger during a trip or requiring emergency medical assistance) 4: affecting life outcomes & wellbeing would be employment decisions, access to education, credit and financial services, legal services, and access to utilities - water and electricitiy. 3: affecting quality of life or opportunties such as social services, transport, access to training 2 & 1: non essential services like entertainment and shopping
Free text comments	

[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	

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?**	Yes. This practise has been happening prior to AI. There are many case where large supermarket chains have different prices on products based on the location. As I travel globally, this practise is everywhere. I notice the change many years ago. For example a person in Australia wants to buy an Apple Mac and it costs $1,999 AUD. Then they travel to NZ and it costs $1,999 NZD, and then they travel to europe and across europe it's $1,999EU, and UK it's 1,999 pounds.This is not just Apple, not singling this company out but an example.
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)**	It's shouldn't happen regardless where you live but it does. If an apple was $1 at for example a supermarket in Brisbane city, then that same apple at $1 should be the same in Logan. Where it is different is based on state taxes impacting the product, thought this happens with cars. I recall at a sport store lining up to purchase a product there were a pile of skateboards selling at $99 as a sale. In front of me as a customer they changed the sign to $130 as a sale. I could have purchased a skateboard at $130 to find out a few hours ago it was at $99. Same practice.

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	5 - it's import.
The significance of the product or service being purchased	5 - it's import

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?	Opagque Window's algorithm made a decision to not show the job post to Rafqa based on gender. In my view it doesn't make it less of a decision due to it being automated and invisible to her. The platform selected who received the opportunity and who did not based on knowledge the company is prodominately male, and the fact that Rafqa being a female candidate never knew the job existed doesn't mean a deicisoin wasn't made about her. The decision was made and she never got the opportunity to see it nor contest it.

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?	With no clear guidance ('MUST not should), a company may argue they did not arrange for anything to avoid accountability for decisions that affect individuals rights and interests. Example - Candian Airline Chatbot case. Using third party to do it: a company hires another company to use an AI system such as a psychometric assessment, who is responsible. Is it the one who asked for the assessment outcome or the company who actual ran the AI system? Need guidance on whether you can pass responsibility to someone else just by using a middleman. Off the shelf tools: A company purchases an off the shelf customer support tool and makes no backend changes like toggles on authentications, being transparent to customer AI is providing the response. Are they as responsible as a company that built their own support system from scratch? There is a big difference between building something and just pressing the live on something someone else produced. What if the AI system runs on its own without the comapny actively doing anyting like a a job platform deciding who sees a job ad. Did the company really arrange for that to happen or did it just happen in the background without knowledge or the company thinking about it?

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?	Informing the person at the point a decision is being made about them, not in privacy policy they viewed or acknowledge months ago. Most people don't read privacy policies and cannot remember what they agreed to. Disclosure shouldn't be about just explaining that AI was used, but also informing the person what they can do about it in clear language. Like can they request a human to review the decision and how and within what timeframe. Really, disclosure without a remedy is essentially incomplete. Disclosure such as for employment should be around how much weight human oversight is invovled, what the output is, the data it uses, and what AI actually does. Also to whom and when. I think this level of disclosure should be applied to critical and affecting lives as stated under question 5. Level of disclosure is unnessary when it's informational - 1 &2 ranking. The biggest challenges for company's is knowing the level of details to provide and keeping up with changes relating to how AI constantly changes. Disclosure has to be practical. An off the shelf AI solution can update, change its logic, or introduce new features overnight. A company's privacy policy updated in January could be inaccurate by February or overnight. Guidance needs to be on how frequently disclosures must be reviewed, if companies are required to actively monitor changes made by AI vendors, does vendor changes trigger a new disclosure obligation, and whether companies can contractually require vendors to notify them of function changes.