Automated Decision-Making Transparency

Obligation (APP 1) Issues Paper Submission

Respondent: [redacted]

Introduction to response: Transparency as the first condition of corrigibility:

This submission responds to selected questions in the OAIC Issues Paper on the ADM Transparency Obligation. Its central recommendation is that ADM transparency should be interpreted as the first condition of practical correction, not merely as privacy-policy compliance. Transparency is the gateway to correction. It is the primary counter-measure to **Opacity risk**: the existence of conditions when affected people or oversight bodies cannot tell whether AI mattered, what it did, who supplied it, or how to contest it.

Where an APP entity arranges for a computer program to make, or substantially and directly assist in making, a decision that could significantly affect an individual's rights or interests, the privacy-policy disclosure should give individuals enough information to understand:

- the kind of decision,
- the kinds of personal information used,
- the role of the ADM system,
- any third-party involvement, and
- the pathway for seeking access, correction, review, complaint, or other remedy.

Transparency does not by itself provide corrigibility. But without transparency, individuals cannot know whether ADM materially affected them and cannot effectively exercise privacy, anti-discrimination, administrative-law, consumer, ombudsman, sector-regulator, or complaint rights.

The ADM transparency obligation should be interpreted so that privacy-policy disclosure functions as a practical gateway to correction - not as an end in itself. Disclosure should not merely state that ADM is used. It should provide enough plain-language information for an individual to identify the kind of decision, the role played by ADM, the kinds of personal information used, any third-party involvement, the responsible entity, and the available pathway for seeking access, correction, review, complaint, or other remedy.

The OAIC's IPS recommendations show the broader principle that ADM transparency should be decision-specific and pathway-enabling. The same principle should inform APP privacy-policy guidance. Privacy policies should not be required to provide every technical detail, but they should disclose enough to allow individuals to recognise ADM-affected decision contexts and seek further information or review.

Tramsparenency should link to access, correction, review, complaint, anti-discrimination, administrative-law, consumer, insurance, and FOI pathways.

Recommendation for application of a six-part "minimum meaningful disclosure" model

Privacy policies should identify:

1. **Decision kind** What kinds of decisions use ADM? For example: eligibility, prioritisation, pricing, fraud flagging, shortlisting, triage, discipline, service allocation.

2. **ADM role** Does the program rank, score, filter, flag, recommend, summarise, prioritise, triage, approve, reject, escalate, or determine?

3. **Kinds of personal information used** The categories of personal information used, not every data field.

4. **Human role** Is there human review? Does a human make the final decision? Is the ADM output usually followed?

5. **Third-party involvement** Is the system supplied, operated, or materially configured by a third party?
6. **Correction pathway** How can the person seek access, correction, review, complaint, reasons, or further information?

This gives enough removal of opacity and provides information for correction without creating overwhelming technical detail.

The OAIC obligation is not a full right to explanation, appeal, or human review. It is a transparency obligation. But transparency is only useful if it gives people enough information to know whether ADM affected them and what they can do next.

The corrigibility question is:

- Can the affected persons know, challenge, and correct?

The ADM obligation should ask:

- What must privacy-policy disclosure oblige APP entities deploying ADM to do, so that affected persons can begin to know, challenge, and correct?

Question 1. — Substantially and directly related to making a decision.

Question to be answered by response:

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:

Response provided: Ranking the factors using the above mentioned (1-5) ranking system and include any additional factors.

Factors	Ranking
Degree of reliance on the ADM system output	5
Ability and likelihood of human override over an ADM decision	5
Nature of the output (advisory vs determinative)	4
Transparency and explainability of outputs	4
Integration of ADM into decision-making workflow	5
Other: whether the system affects who reaches a human decision-maker; whether it ranks, scores, filters, flags, recommends, prioritises, or triages; whether the decision pathway would likely differ without the ADM output; whether the human decision-maker is expected to follow the output; whether the ADM output frames the evidence or reasons available to the human.	5

Response: Free text comments provided:

This is a question of material influence. The relevant factors should be assessed by practical influence. A computer program should be considered substantially and directly related to a decision where its output materially shapes decision access, ranking, evidence, recommendation, burden, timing, priority, or outcome. "Substantially and directly related" should be assessed by practical influence, not labels.

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.

Question to be answered by response:

Would you consider NACIA's described uses of GPTea to be substantially and directly related to making decisions? Yes/No

Response provided:

Yes

Response reason provided:

This is a question of material influence and evidence framing. GPTea is substantially and directly related to the decision because it summarises candidate profiles and provides eligibility recommendations in a life-changing aged-care support context. Even if NACIA staff retain final decision authority, the chatbot materially shapes the evidence, recommendation, and decision pathway. Human oversight should not remove the use from scope unless the human review is genuinely independent and the ADM output is not materially relied upon.

Question 3. — Significantly affect rights or interests.

Question to be answered by response:

What factors do you consider increase the likelihood that a decision could affect an individual's rights or interests?

Response provided: Ranking the factors using the above mentioned (1-5) ranking system and include any additional factors:

Factor	Ranking
Vulnerable persons	5
Financial outcomes	5
Sensitive information	5
Intrusive practices	4

Additional factors to consider:

- access to essential services;
- employment, education, housing, credit, health, aged care, welfare, insurance, migration, policing, or legal treatment;
- exclusion from opportunity;
- ability to contest the decision;
- reversibility of the outcome;
- cumulative effect of repeated ADM decisions;
- power imbalance between entity and individual.

Response provided: Free text comments:

This is a question of rights impact risk. ADMs can materially affect access to employment, housing, credit, welfare, health, education, policing, migration, public benefits, discipline, legal treatment, or other significant life chances. Significance increases where the decision affects life chances, essential services, vulnerability, or capacity to contest.

Question 4.— Meaning of Significantly affect rights or interests: Vulnerable persons.

Question to be answered by response:

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?

Response provided:

Questions related to the vulnerability of persons should not be limited to fixed personal characteristics. To understand vulnerability, considerations should extend to include circumstances where a person has reduced practical capacity to understand, challenge, correct, or recover from an ADM-affected decision. Classes may include:

- older persons;
- children and young people;
- people with disability;
- people experiencing family violence;
- people with limited English proficiency;
- people with low digital literacy;
- people experiencing poverty, homelessness, unemployment, or financial stress;
- migrants, refugees, and people with insecure visa status;
- people in institutional settings;
- people dependent on the service being decided;
- people subject to coercive, disciplinary, or surveillance-heavy contexts

Question 5. - Significant service or support.

Question to be answered by response

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?

Response provided: Ranking the factors using the above mentioned (1-5) ranking system and include any additional factors:

For example:

Factor	Ranking
physical assistance/support	5
financial assistance	5
access to educational services	5
'in home services'	5
access to essential banking and credit services	5
access to telecommunications	5
access to essential utilities	5

Other, include also:

- housing and tenancy services;
- employment and recruitment services;
- insurance;
- health triage;
- aged-care eligibility;
- disability support;
- child and family services;
- migration and visa services;
- policing, compliance, enforcement, or fraud investigation;
- platform-work allocation where livelihood is affected.

Ranking: 5

Essential, enabling, high-dependence, or life-chance-affecting services should be treated as significant.

Question 6. — Meaning of significantly affect rights or interests: Other legal frameworks or policies.

Question to be answered by response

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

Response provided:

Yes. This question involves consideration of correction pathways. The OAIC should have regard to privacy, anti-discrimination, administrative law, consumer law, human rights, FOI, ombudsman, and sector-specific frameworks when interpreting "rights" and "interests." The ADM Transparency Obligation will often be the first point at which an individual can identify that a decision may have been materially affected by a computer program. That information may then determine whether the individual can seek access to or correction of personal information, request reasons or review, complain to an ombudsman or regulator, raise anti-discrimination concerns, pursue consumer or financial services remedies, or use sector-specific dispute pathways.

For that reason, "rights or interests" should be interpreted practically. The relevant question is not only whether the ADM decision finally determines a legal entitlement, but whether it materially affects the individual's practical access to a significant service, opportunity, benefit, price, priority, review pathway, or legal/public treatment. Privacy-policy disclosure should be framed so that individuals can identify the relevant correction pathway, not merely understand in general terms that ADM is used.

Various correction pathways should be made transparent to affected persons:

- Privacy Act access and correction rights;
- FOI Act and Information Publication Scheme for government ADM;
- Administrative Decisions (Judicial Review) Act and merits review frameworks where applicable;
- Commonwealth Ombudsman oversight;
- anti-discrimination law;
- Australian Human Rights Commission Act;
- consumer protection and misleading/deceptive conduct rules;
- ASIC/ACCC frameworks for financial and consumer decisions;
- Fair Work frameworks for employment and workplace decisions;
- sector-specific health, education, aged-care, insurance, and welfare frameworks.

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 on Daintree when his book-club buddy, Charles, from a country town, paid only $35 from Daintree. 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.

Question to be answered by response:

1. 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?
2. 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)
3. In judging whether differential pricing significantly affects rights or interests, how important would you consider the following factors on a scale from 1 to 6 (with 1 being not at all important and 6 being very important):

a. the dollar amount of differential pricing
b. the significance of the product or service being purchased?

Response provided:

1. Yes, potentially. This inflation of prices for a consumer product has likely significantly affected the interests of Marco, now that we know his circumstances. But not every price difference is significant. This question requires consideration of practical effect and proportionality. Differential pricing can significantly affect interests depending on amount, service importance, vulnerability, opacity, and cumulative impact.
2. The test should not be a fixed percentage alone. Relevant factors:

- dollar amount;
- percentage difference;
- importance of the product or service;
- whether the product is essential or discretionary;
- whether sensitive or inferred personal information was used;
- whether the person had a practical alternative;
- whether the pricing was opaque;
- whether the person could contest or understand the basis;
- whether the practice affects vulnerable consumers or occurs at scale.

For the edge case, a $100 price compared with $35 is a large differential. It is almost a **186% increase** over the $35 price. Even though the product is a book rather than healthcare or credit, the magnitude and postcode-based inference make it significant enough to warrant transparency.

- I would not support a single universal threshold such as 5% or 20%. A 20% difference may be significant for essential goods or vulnerable consumers, while even larger differences may be less significant for luxury goods. Significance should be assessed by combining amount, percentage, product importance, vulnerability, opacity, and contestability.

3. Judging whether differential pricing significantly affects rights or interests on a scale from 1 to 6 (with 1 being not at all important and 6 being very important):
    a. the dollar amount of differential pricing: 6
    b. the significance of the product or service being purchased: 6

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.

Question to be answered by response:

1. Should it be considered a 'decision' that Rafqa did not receive the Manscon job ad? Please provide a Yes/No response.
2. Can you provide your reasons for your response?

Response provided:

1. Yes, this should be treated as decision-relevant where algorithmic targeting, used by the ironically named job site, materially affected Rafqa's access to an employment opportunity
2. Although this is not a "decision" in the traditional sense of "we rejected your application." But the practical effect is similar:

- Rafqa was excluded from the pathway before she could apply.

A decision should not be limited to a final acceptance or rejection. Algorithmic non-promotion, non-selection, de-prioritisation, or exclusion from the opportunity to be considered can significantly affect rights or interests, particularly where protected attributes such as gender are used or inferred. In corrigibility terms, this is an **access-pathway decision**. Guidance should recognise that a decision may significantly affect rights or interests where ADM materially shapes access to an opportunity, service, benefit, support, price, or human decision-maker. A person may be affected not only by a final refusal, but by algorithmic non-selection, non-promotion, non-escalation, de-prioritisation, or exclusion from the opportunity to be considered.

Question 9. Meaning of 'arranged for'.

Question to be answered by response:

Are there any scenarios relevant to the meaning of 'arranged for' that you consider require guidance? If so, why?

Response provided:

Guidance should make clear that an APP entity may have "arranged for" ADM where it procures, configures, integrates, directs, permits, or relies on a third-party computer program to make or materially assist a decision. Scenarios requiring guidance:

- recruitment platforms ranking or filtering applicants;
- insurers using third-party risk scores;
- employers using workplace analytics or performance-ranking tools;
- banks using outsourced credit scoring or fraud detection;
- landlords using tenant-screening platforms;
- agencies using vendor case-management tools;
- hospitals or aged-care providers using triage tools;
- platforms using algorithmic ad targeting that affects opportunity access;
- AI tools embedded in SaaS products where the entity relies on the output.

Main point:

- An entity should not avoid ADM transparency because the system is supplied, hosted, operated, or technically controlled by a vendor.

The priciple that **outsourcing should not defeat responsibility** should be applied. “Arranged for” should capture third-party ADM where the APP entity procures, configures, permits, or relies on the system.

Question 10: Extent of disclosure

Explaination provided by OAIC

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

Question to be answered by response:

Having regard to the above considerations, is there anything additional that entities should disclose to provide effective and meaningful disclosures about ADM?

Response provided:

Yes. Since disclosure is the first correction step, in order to provide effective and meaningful disclosure, entities should disclose enough information for individuals to begin to know, challenge, and correct ADM-affected decisions. This does not require technical detail about algorithms, source code, or model architecture. It requires correction-enabling information.

Privacy policies should identify:

1. the *kinds of decisions* for which ADM is used: e.g. Eligibility, ranking, triage, pricing, fraud flagging, shortlisting, service prioritisation, discipline, allocation, escalation;
2. the *role played by the ADM system*, such as ranking, scoring, filtering, flagging, recommending, prioritising, triaging, summarising, approving, rejecting, escalating, or determining;
3. the kinds of personal information used, including whether inferred, derived, sensitive, behavioural, financial, location, health, demographic, or other significant *data categories* of personal information may be used;
4. whether a *human decision-maker role* is involved and, at a high level, whether the ADM output is advisory, normally relied upon, or determinative, whether the human can override it, and whether the ADM output is normally relied on;
5. whether a *third-party system*, vendor, platform, or service provider is *involved* in suppling, hosting, configuring, or operating the ADM system;
6. how the individual can request *access to or correction* of personal information used in the ADM process; and
7. the *pathway* by which the individual can seek further information, internal review, complaint handling, or referral to an external review or complaint pathway where applicable.

This level of disclosure would remain plain-language and non-technical, but would allow the information and the decision to be challenged or contested. It would also align with the purpose of the ADM obligation by connecting transparency to practical correction pathways.

Disclosure should be framed so that individuals can identify whether ADM may have materially affected them and what practical step they can take next. A privacy policy should not become a technical description, but it should be specific enough to allow the information and the decision to be challenged or contested.

Summary:

Privacy-policy ADM disclosure should be specific enough that an affected person can identify the decision, the data, the ADM role, the responsible entity, and the next correction pathway.