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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.	Degree of reliance on the ADM system output- **Rank 5** Ability and likelihood of human override over an ADM decision – **Rank 5** Nature of the output (advisory vs determinative) **– Rank 5** Transparency and explainability of outputs – **Rank 2** Integration of ADM into decision-making workflow – **Rank 4** Other – **Not ranked** Other considerations (we would want to rank if included) Does output narrow pool of individuals being considered Rank 5 Does it identify adverse information that may not otherwise be reviewed Rank 4 Does the system change an outcome when compared to a fully manual process Rank 5 Whether the ADM system determines which records, data sources, or risk indicators are presented to the reviewer — Rank 5

Free text comments	In the PBSA's submission, whilst the transparency and explainability of outputs are important considerations to the desirability of any process, considering them do not assist with guidance as to whether or not the process is substantially and directly related to making a decision. For example, an organisation could have an AI system that is a complete black box, but an organisation decides to follow what it says exactly; or the organisation could have an automated system that will log everything it considers, but the output is just one of a 100 pieces of information that the decision maker considers, and ultimately gives almost no weight towards it. Transparency and explainability speak to the ability to audit and/or appeal a decision that has been made by the business, but not whether the ADM process is substantially and directly related to the decision. Additional factors relevant to assessing whether an ADM system substantially facilitates and is directly connected to a decision include, whether the system narrows the pool of individuals considered, whether it identifies information that materially influences subsequent review, and whether the use of the system is likely to produce different outcomes than would occur under a wholly manual process. These factors focus on the practical influence of the system within the decision-making workflow rather than merely its technical role. The last factor is added as a potential consideration because in many decision workflows, the most influential step is not the final adjudication but the filtering and presentation of information. If the system decides what information the reviewer sees, it can significantly shape the outcome even where a human retains final decision-making authority. This would be of particular impact to PBSA members and the work they do.

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?	The PBSA assumes that in this example the staff are basing their decision solely on the output from GPTea, which may exclude relevant information. If the OAIC's example had said, "using the recommendation provided by GPTea alongside the complete application, the answer may be different. PBSA submits that meaningful human review should be assessed by examining whether the human reviewer: • reviews the underlying information rather than only the AI-generated summary; • has authority to depart from the recommendation and make an independent judgement; • can identify material omissions or inaccuracies in the AI output. Human involvement should not be considered meaningful where the reviewer merely approves or rubber-stamps an AI-generated recommendation.

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.	Sensitive information – Rank 2 Vulnerable persons – Rank 1 Intrusive practices – Rank 3 Financial outcomes – Rank 4 Other – Availability of health treatment – Rank 5 Other considerations (we would want to rank if included) Access to services/programs/opportunities - Rank 4 Anything that has the potential to create an adverse situation for an affected individual - Rank 4
Free text comments	In the PBSA's submission, whether a decision-making process significantly affects rights or interests is primarily assessed by the **outcomes** of the process, not the inputs into the process. That significance should primarily be assessed by the nature and the consequences of the process for the individuals affected by it. The nature of the information used, and characteristics of each individual may be relevant indicators, but should not be determinative in isolation. In framing our response, the PBSA notes that automated decision-making

	forms part of a process; and each business will need to consider (in advance of engaging with any individuals) whether the ADM used in that process warrants disclosure in the privacy policy. Preferably, guidance should not assume that a business has the luxury of talking to each individual about their particular circumstances, sensitivities or vulnerabilities, or an ability to assess all potential consequences for that individual. The automation of a decision-making process, and whether that should be disclosed in a privacy policy, must necessarily be considered at a whole-of-process level. Guidance that a business must vary its assessment of its process depending on who engaged with the business would not be helpful guidance at all.

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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?	The PBSA does not consider this to be a relevant consideration for guidance on the application of the ADM obligation to a business process that must be assessed in advance and written into the privacy policy before any specifically vulnerable individual even engages with the business. Alternatively, if the OAIC guidance is to suggest that vulnerability may be a relevant consideration, the guidance should provide objective criteria that can be consistently applied by organisations. Entities should not be required to speculate about individual vulnerability characteristics that may be unknown to them.

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.	The PBSA makes no comment on the above examples as they are not relevant to our members. We would, however, consider the following examples more relevant to our members and seek guidance as to whether the OAIC considers these significant services or supports: • employment; • contractor engagements; • occupational licensing; • volunteer positions;

	• rental accommodation; • educational placements; and • government clearances
Free text comments	The PBSA notes that many, if not most, Australian businesses provide goods or services that do not directly impact health, financial or shelter of consumers. It is these 'other' businesses who will be in most need of guidance from the OAIC. PBSA members, for example, need to consider whether a service that may impact access to employment, rental accommodation and occupational licensing opportunities would qualify as a significant service. Further guidance on this question would be welcome.

[1] For example, paragraph 343 of the Explanatory Memorandum states that this may include access to healthcare services.

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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	PBSA submits that, in considering the meaning of "rights" and "interests", the OAIC should have regard to existing Australian anti-discrimination laws, Fair Work legislation, occupational and professional licensing frameworks, and relevant international approaches to automated decision-making and AI governance. While PBSA members may hold differing views on the application of these frameworks, they provide useful context for assessing when automated decision-making may have significant impacts on individuals.

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?**	The PBSA makes no submission on this point. Its members represent wide range of views. The significance of any impact should be assessed to consider the magnitude of the differential treatment and the importance of the affected product or service to the individual.

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)**	N/A

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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	The PBSA makes no submission on this point. Its members represent wide range of views.
The significance of the product or service being purchased	The PBSA makes no submission on this point. Its members represent wide range of views.

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?	The PBSA considers that access to employment, rental accommodation and occupational licensing opportunities would all qualify as a significant service. While no employment decision has yet been made in this scenario, the algorithmic suppression of a job advertisement may notably affect an individual's opportunity to access employment. PBSA therefore considers that such conduct may constitute a decision for the purposes of the obligation.

Question 6

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?	This section is likely to determine who maintains compliance obligations and considering the role our members may play, it will be helpful to understand which entity is considered to have "arranged for" the ADM activity. Further guidance would be valuable regarding situations where a screening provider supplies technology used by a customer to make decisions; a third-party AI vendor supplies models used within a screening process but not created by the member organization; a screening provider configures but does not operate an ADM system; and multiple entities contribute to the decision-making workflow.

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?	The PBSA considers that the above guidance is appropriate. Disclosure requirements should remain proportionate and technology neutral. Guidance should avoid requiring disclosure of proprietary algorithms, trade secrets, model weights, or technical details that would not materially assist individuals in understanding the nature of the decision-making process. Organisations should instead focus on: • the purpose of the ADM system; • the categories of personal information used; • the role of human review; • the types of decisions affected; and • mechanisms for review or challenge.

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