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.	1. Transparency & Explainability of outputs 2. Degree of reliability of outputs (how well it repeats outcomes with same variables) 3. Nature of output and the ability of human override is more linked 4. Degree of reliance and likelihood of human override is linked 5. Who (with real power) will be held accountable for any decisions contested?
Free text comments	6 What off switches are present in the system Key is the transparency & explainability of outputs. It needs to be explainable in terms an affected person can understand and act on (what drove the decision and how a different output could arise) and how to challenge it (keep decision logs and data lineage so any decision can be reconstructed and challenged after the fact). Internal audits have conflicts of interest - there needs to be independent regular external audits conducted to ensure accountability of outcomes. Restrict high-stakes uses (liberty, livelihood, health, benefits) to models whose decisions can actually be explicitly reasoned about.

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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. The presence of 'Human in the loop' is no guarantee due to automation bias, or institution pressure to conform to recommendations. A near-zero override rate signals the human is decorative. There should be no penalty for overriding.The system still needs to explain clearly how it arrived at its recommendation, include provide defensive reasons it could reach alternative recommendations. Make contestability a design requirement. There also needs to be regular independent external verification by bodies outside the system to verify the recommendations are valid.
Can you provide your reasons for your response?	

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.	1. goals of the system or decision-makers (where the client 'best interests' are secondary to the system goals) 2. have clear independent ratings about the significance of impact on individual's rights and interests 3. What outcomes would be achieved if the individual opts out of the system 4. Degree of contestability of decisions 5. The presence of self-generating feedback loops - where ADM outcomes generates or feeds more ADM independent of external verification 6. sensitive information 7. vulnerable persons (right to consent, insight & ability to challenge decisions) 8 intrusive practices 9. financial outcomes
Free text comments	

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?	Anyone who cannot fully understand the decision making process involving them, know what alternative outcomes are possible, the true ability to achieve a different result from the same or alternative source or be clear that the person has limited options otherwise. This is key no matter what system is involved.

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.	rather than rank - it should come back to the WHO definition of mental health: a state of mental well-being that enables people to cope with the stresses of life, realize their abilities, learn well and work well, and contribute to their community. Anything that impacts or interferes with this becomes a significant service or support. all need appropriate access to a minimum level of educational services, all will need access to essential utilities, essential banking/credit, telecommunication access. For some it is critical to have access to physical assistance, 'in home services' - this doesn't mean it should rank less, but that it may only apply to a minority - but could still be vital in our community overall.
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	I would add the WHO Mental Health definition. {Most frameworks can be gamed if treated as a compliance checklist rather than a genuine constraint. The harder, non-technical requirements — independent power to halt deployment, real liability, meaningful consent — are the ones most often missing, precisely because they impose real costs on the deployer.}

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?**	I see this as a commercial decision by Daintree - assumingly one of many viable options in sourcing this book. If Daintree has a significant majority player with limited competition (if the issue is more about essential or necessary services - e.g. required textbooks for a particular study course for a profession, government publications, or medicines), then Daintree may be seen as problematic.
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)**	See above. If there is viable competition, then it is less relevant. If there are no viable comeptition (they have monolopolistic positioning) or they provide essential or primary supplier of necessary services than differential pricing should be seen as exploitative rather than just a commercial tactic.

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	Percentage is more important than dollar value.
The significance of the product or service being purchased	5.The significance is key - especially when there are limited (where possible near-illegal industry collusion could be achieved) or no viable alternative sources involved.

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?	If R's gender was sole reason this was not shown to R then it meets the requirement of legal Discrimination.

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?	The organisation that delivers the outcomes needs to be always accountable for the final decision-making and always have the capacity to override decisions - and cannot outsource responsibility or appeal to their providers. There always need to be clear documented pathways involved in any decision-making. Any group that is arranged to be involved in any decision-making needs to be able to provide to the organisation delivering the outcomes the same accountability measures to the public that the organisation delivering the outcomes should.

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 level of regular independent monitoring and verification that decisions meet current legal and regulation laws and policies. The results of regular reporting of human decisions to override the system. The level of the best interests of the people affected are being balanced with the goals of the organisation making decisions. That all decision factors involved are clearly explained and have the capacity for overriding if not relevant to the provision of service.