CALI Council of Australian Life Insurers

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Australian Information Commissioner
GPO Box 5288
Sydney NSW 2001

Via email: privacyreformtranche1@oaic.gov.au

# Automated Decision-Making Transparency Obligation (APP 1)

Dear Commissioner

The Council of Australian Life Insurers (**CALI**) welcomes the opportunity to respond to the Issues Paper on the Automated Decision-Making (**ADM**) transparency obligation under Australian Privacy Principle (**APP**) 1.

Life insurers rely on personal data and automated systems to support core decisions such as underwriting, pricing and claims assessment. These decisions directly affect customers' contractual rights and financial outcomes and are already subject to robust legal, regulatory and industry frameworks. CALI supports the objective of improving transparency where automated systems materially influence these decisions.

As currently framed, key concepts including the definition of a 'computer program' and the threshold of systems that are 'substantially and directly related' to decision-making remain too broad and may be difficult to apply in practice. Without clearer boundaries, there is a risk the obligation captures low-impact, administrative or productivity-enhancing uses of technology that do not meaningfully affect customer outcomes, creating unnecessary compliance burdens without improving transparency.

To support effective and proportionate implementation, we submit the Commissioner consider the following:

- **Focus on core decisions and material outcomes**
  Guidance should clarify that the obligation applies to systems that materially inform or determine outcomes across the customer journey (e.g. underwriting, pricing and claims), rather than intermediate or supporting processes.
- **Clarify the threshold of "substantially and directly related"**
  Greater clarity is needed on how to assess material influence, including the level of reliance placed on system outputs, their impact on the outcome, and the role of human oversight.

- **Avoid capturing low-impact and administrative uses of technology**
  Guidance should confirm that administrative, workflow and productivity tools including commonly used software, are out of scope unless they materially influence a core decision.
- **Provide practical, industry-specific examples**
  Worked examples illustrating in-scope and out-of-scope scenarios will be critical to support consistent interpretation, particularly across financial services use cases.
- **Recognise the role of the Life Insurance Code of Practice (Life Code)**
  Acknowledgment of the Life Code as an established industry framework that already supports transparency, support for customers experiencing vulnerability or financial hardship, and clear customer communications.

CALI supports a principles-based approach that focuses on material outcomes, leverages existing regulatory frameworks, and ensures the obligation remains proportionate and workable in practice.

Our detailed responses are provided in **Attachment A**.

CALI would welcome the opportunity to engage further with the Office of the Australian Information Commissioner (**OAIC**) as guidance is developed. For any queries, please contact Prue Wilson at prue.wilson@cali.org.au

Kind regards

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Council of Australian Life Insurers

## About the Council of Australian Life Insurers (CALI)

CALI is the leading voice of life insurance in Australia. We support Australians to make informed choices about their future and help them live in a healthy, confident and secure way over their lifetime.

Our members' products and services give people peace of mind when making important decisions and provide a financial safety net during life's biggest challenges.

CALI's mission is to support our members to build a strong and trusted life insurance industry, that provides accessible protection and support to millions of Australians every day.

We do this by advocating for national policy settings that improve access to life insurance and by being the leading voice on affordable, understandable and trusted insurance.

CALI represents all life insurers and reinsurers in Australia. The Australian life insurance industry is today a $26.4 billion industry, employing thousands of Australians, holding $133.3 billion in assets with $97.8 billion in Australian debt and equities and paying billions of dollars of benefits each year.

For more information, visit www.cali.org.au

## Attachment A: detailed response

### Question 1 & 2— Generative Artificial Intelligence (AI) and the definition of a 'computer program' and 'substantially and directly related' to decision-making

CALI notes that the definition of 'computer program' is intentionally broad and may encompass a wide range of tools, including basic software and rule-based systems. It is therefore critical that guidance distinguishes between systems that materially inform or determine core decisions, and those that perform ancillary, administrative or productivity-enhancing functions. Without this distinction, there is a risk the obligation captures low-impact uses of technology that do not meaningfully affect customers, creating unnecessary compliance burden without improving transparency outcomes.

In this context, a 'core decision' is should be understood as a decision that impacts a customer outcome such as whether cover is offered, on what terms, or how a claim is assessed, rather than the smaller, incremental assessments that contribute to that outcome. Guidance should therefore focus on systems that materially influence that core decision, rather than those supporting intermediate steps.

Whether a system is 'substantially and directly related' to a decision should be assessed by reference to its role in shaping that outcome. Relevant factors include the extent of influence on the outcome, the degree of reliance placed on outputs, and whether the system provides a critical input. Systems that are determinative, or provide key inputs, are more likely to meet the threshold, whereas tools performing administrative or preparatory functions (e.g. calculations, data processing or workflow support) are unlikely to do so where they do not materially influence the outcome. These systems may generate outputs that are used in decision-making, they are not typically purpose-built automated decision-making systems. This is particularly relevant where commonly used tools, such as spreadsheet models or pre-programmed formulas, may technically fall within the definition of a 'computer program' but do not, in practice, materially influence the outcome of a core decision.

More broadly, the concept should not be assessed in isolation. The key considerations are the degree of automation, the significance of the decision, and the extent of human involvement, which together determine whether disclosure meaningfully improves transparency. In life insurance, systems typically support rather than replace human judgement. Meaningful human oversight, including review and the ability to override, is therefore a critical factor in assessing whether a system is substantially and directly related to a core decision.

To support consistent application, CALI considers the following framework captures the key distinctions:

- **Administrative ADM:** decisions that support human judgement (e.g. highlighting or summarisation);
- **Decision Support ADM:** recommends or calculates outcomes subject to human approval;
- **Semi-automated ADM:** executes decisions with human oversight and ability to intervene; and
- **Fully automated ADM:** operates without real-time human involvement.

This framework also applies to generative AI. The key issue remains whether the tool materially informs the outcome of a core decision. While the Issues Paper indicates that systems which recommend or guide decisions may fall within scope, "substantially" and "directly" remain difficult to apply where technology is one of several inputs. In practice, tools such as risk underwriting models, claims triage systems and workflow tools may influence outcomes to varying degrees depending on their use, the reliance placed on outputs, and the level of human oversight.

Where generative AI provides analysis or recommendations that are relied upon in reaching a core decision, it is more likely to be in scope, even where a human retains final authority. For example, tools that synthesise information into underwriting risk assessments or highlight indicators relevant to claims decisions may materially influence outcomes.

By contrast, where generative AI is used for administrative efficiency, summarisation or drafting support, it is generally less likely to fall within scope, unless those outputs are relied upon in a way that substantively shapes the decision outcome.

Further clarification is also required in scenarios where multiple systems each contribute a minor input to a decision. Guidance should adopt a clear approach, confirming that materiality is assessed by reference to the cumulative effect of one or more systems rather than assessing each system in isolation. A proportionate approach would focus on whether any individual system, or set of systems, materially informs the final decision outcome.

CALI considers that practical, industry-specific examples would assist in clarifying this distinction, particularly where technologies are used across both decision-support and administrative functions.

### Question 3 — Factors relevant to 'significantly affecting rights or interests'

In the life insurance context, many core decisions—such as underwriting outcomes, claims determinations and policy variations—directly affect customers' contractual rights and financial interests. These decisions are already subject to established legal frameworks such as the Insurance Contracts Act 1984 (Cth) and transparency and disclosure frameworks, including in the Corporations Act 2001 (Cth). The Life Insurance Code of Practice also outlines specific obligations on life insurers in respect to claims and underwriting decisions, which also mandate review rights and escalation pathways in the event of a declined underwriting application or claims decision or offering alternative terms.

Consistent with CALI's broader concern regarding scope, an overly expansive interpretation of what constitutes a decision that 'significantly affects' rights or interests risks capturing a wide range of routine or supporting processes that sit beneath these core decisions. This would add complexity without improving customer understanding, particularly given life insurers typically operate multiple, distinct decision-making use cases rather than a single, uniform process.

While the Explanatory Memorandum provides helpful context referring to impacts on financial circumstances, health, employment or broader personal situations, these concepts are broad and outcome-dependent. Further clarity is therefore required to support consistent and practical interpretation, including how these factors should be applied across different sectors and decision types.

Clear guidance on what decisions "significantly" affect a person's rights or interests is important and should align with decisions requiring review or escalations consistent with the Life Code. While the statutory examples are helpful, the threshold remains uncertain in practice, particularly where impacts may be indirect, cumulative or commercially significant without clearly affecting a legal right.

In the insurance context, decisions that determine customer outcomes such as access to cover, terms of cover, pricing or claims outcomes may significantly affect rights or interests. By contrast, it is less clear whether operational or supporting processes such as prioritising interactions, assigning internal risk ratings, routing correspondence or using AI to summarise information for a claims officer should be captured.

CALI considers that guidance should adopt a principles-based approach that focuses on core decisions and material outcomes, rather than capturing the full spectrum of underlying processes. This will better support meaningful, customer-focused transparency, while ensuring the obligation remains proportionate, workable in practice, and aligned with existing disclosure regimes.

### Question 4 & 5— Vulnerable persons and significant services or supports

The Life Code provides an established framework that recognises a range of vulnerabilities, including customers experiencing mental health conditions, family violence, and financial hardship, and sets obligations for life insurers to adapt communication and provide appropriate support.

CALI considers that 'significant services or supports' should be interpreted as services that are essential to a customer's financial security, health or wellbeing. Life insurance is a clear example of such a service, providing a critical financial safety net in the event of death, illness or disability. Core decisions that affect access to life insurance products, or the terms and outcomes associated with them, are therefore likely to affect a customer's rights or interests.

In this context, customers experiencing illness, disability or financial stress may be more affected by core decisions, including those relating to underwriting, pricing or claims outcomes. The impact of a core decision will vary depending on individual circumstances, and a principles-based approach will better support consistent, fair and customer-focused outcomes.

CALI considers that guidance should allow flexibility in recognising vulnerability, while avoiding rigid classifications and prescription. This approach will better support life insurers to respond to customer needs in a way that reflects individual circumstances and is tailored to the customer's situation.

CALI notes that the disclosure obligations under APP 1.7–1.9 operate at the level of an entity's privacy policy, rather than requiring individualised disclosures tailored to specific vulnerable cohorts. Guidance should clarify this distinction to avoid implying that disclosure obligations arise depending on customer vulnerability. Privacy policies are not designed to support differentiated, customer-level disclosures, and such an interpretation would create uncertainty and implementation challenges without improving transparency outcomes.

At the same time, guidance should clarify that vulnerability is to be assessed objectively, based on characteristics known to the entity at the time of the decision, to support certainty and consistent application across industry.

### Question 6 — Relevant legal frameworks

CALI considers that the OAIC should continue to have regard to existing legal and regulatory frameworks when developing guidance, including privacy law, anti-discrimination law and financial services regulation.

Life insurers operate within a comprehensive, robust and mature conduct and prudential regulation environment. This includes obligations relating to fairness, discrimination and responsible data use. This includes long-standing legal frameworks that include limited exemptions to enable risk rating on an individual basis, where supported by relevant data and reasonable statistical or actuarial analysis.

These settings are fundamental to risk-based underwriting and pricing decisions and provide customers strong protections at law.

In addition, life insurers are subject to extensive disclosure obligations, including requirements to clearly explain product features, eligibility criteria, exclusions and limitations through Product Disclosure Statements (**PDS**) and other customer communications. These obligations are designed to support transparency and informed decision-making by customers in relation to life insurance products.

Taken together, these frameworks already provide important safeguards and transparency around how core decisions are made, including those informed by data and automated processes. Alignment with these existing obligations will support consistency, avoid duplication, and ensure that any new ADM guidance complements established regulatory settings.

### Questions 7 — Differential pricing

CALI notes the Issues Paper's discussion of differential pricing and other potential harms associated with ADM. In the life insurance context, the use of personal information to inform decision-making is not incidental; it is fundamental to how the industry operates. Core decisions such as underwriting, pricing and claims assessment rely on the use of personal information to evaluate risk and ensure that premiums, eligibility and policy terms are appropriately aligned to that risk. This ensures fairness, equity and stability of premiums across the entire risk pool, including for those customers who never make a claim.

In this context, pricing is a core decision that is inherently risk-based and grounded in actuarial assessment. Differential pricing based on factors such as health status, occupation or lifestyle is a fundamental and actuarially justified feature of life insurance. This distinguishes life insurance from scenarios referenced in the Issues Paper where differential pricing may be arbitrary or unrelated to risk. In life insurance, pricing differentiation is evidence-based, subject to regulatory oversight, and essential to maintaining fairness and sustainability across the risk pool. This pricing differentiation is grounded in Commonwealth, State and Territory legislation, chiefly section 46 of the *Disability Discrimination Act 1992* (Cth) (**DDA**).

Importantly, these practices already operate within a mature regulatory and disclosure framework that supports clear, fair and transparent customer outcomes and provides safeguards around how pricing and other core decisions are made.

Consistent with this, CALI considers that guidance should clearly distinguish between legitimate evidence informed, risk-based pricing and forms of differential pricing in other sectors that may give rise to customer harm.

CALI recommends that guidance acknowledge this distinction and avoid framing differential pricing, in and of itself, as indicative of potential harm. Rather, the emphasis should be on ensuring that decision-making processes are fair, evidence-based, and consistent with existing legal and regulatory obligations.

### Question 8 — Meaning of a 'decision'

CALI supports the interpretation of 'decision' that focuses on outcomes that constitute core decisions, consistent with the Life Code. This includes underwriting outcomes, claims determinations and policy variations. These decisions are substantive in nature and have a direct and meaningful effect on customers.

Consistent with CALI's broader position on scope, guidance should not extend to all instances of automated activity, such as content delivery, marketing, where the effect on the customer is indirect or minimal. Capturing these activities risks blurring the focus on core decisions and may reduce the clarity and usefulness of disclosures for customers.

CALI considers that a clear, outcomes-focused interpretation will better support consistent application across sectors while ensuring the obligation remains proportionate and targeted to decisions that have a genuine impact on customers.

### Question 9 — Meaning of 'arranged for'

The Issues Paper recognises that entities may be responsible for ADM where they have 'arranged for' a system, including through third-party providers. CALI acknowledges that, in practice, this reflects the accountability that entities have for the systems and processes they rely on. However, further clarification is needed, particularly given the nature of operational and distribution arrangements in life insurance.

Life insurers operate across multiple distribution channels, including direct-to-customer models, advised channels, and group insurance arrangements via employers or superannuation funds. In these channels, there may be multiple entities involved in the customer journey, underwriting process or claims management, each potentially using systems that support or influence decision-making. As a result, there is practical complexity in determining how disclosure obligations should be applied, including which entity is best placed to disclose information about the relevant system particularly where systems are embedded within platforms or services operated by intermediaries or third parties.

In this context, guidance should focus on ensuring that the level and form of disclosure is proportionate to what is practically achievable in complex, multi-party arrangements. Obligations should not extend to systems or processes outside an entity's reasonable control or oversight.

Guidance should consider the below common scenarios, including:

- **Arrangements within the insurer's own organisation:** use of internally implemented systems that include automated or rule based processes (including legacy systems implemented prior to the introduction of the obligation), as well as standard or off the shelf software adopted and configured by the insurer (including tools with embedded artificial intelligence functionality).

- **Arrangements involving third party providers:** use of third party software as a service (**SaaS**) platforms or other externally provided systems that contain embedded automated processes or generate outputs that inform decision making, where those systems are adopted or integrated by the insurer.
- **Multi-party arrangements (third and fourth parties):** scenarios where an insurer engages a third party, and scenarios where that third party relies on systems or services provided by a fourth party. In these arrangements, guidance should clarify which entity is considered to have "arranged for" the ADM.

Guidance should also clarify that permission for staff to use general purpose or productivity tools does not, in itself, mean an entity has "arranged for" ADM.

Without this clarity, there is a risk that entities may be required to map and disclose complex, multi-party processes in a way that is operationally burdensome and not meaningful for customers.

### Question 10 — Extent of disclosure

CALI supports an approach to disclosure that focuses on providing meaningful and accessible information to customers about the use of ADM in core decisions. Privacy policies are intended to give customers a clear understanding of how their personal information is handled, and overly technical or detailed disclosures risk undermining that objective.

CALI considers that disclosures should be concise, expressed in plain English, and focused on purpose rather than process. Consistent with existing disclosure frameworks and the Explanatory Memorandum, guidance should confirm that entities are not required to describe end-to-end decision-making processes, system-level logic, or commercially confidential information. Instead, disclosures should focus on the nature of the process and the kinds of decisions being supported or made.

In the life insurance context, ADM and personal information are used across a broad range of processes, including underwriting, claims management, pricing, product design, risk monitoring, fraud detection and customer engagement. These use cases vary significantly in complexity, purpose and impact, and life insurers typically operate multiple, distinct processes rather than a single, uniform application. As such, the broader the scope of the obligation, the more challenging it becomes to provide clear, consistent and meaningful disclosures.

This challenge is particularly acute for large organisations operating across multiple business lines and customer segments, where ADM may be used across a wide range of distinct processes, each with different purposes, inputs and outcomes. Unlike smaller or more uniform operations, large entities may need to account for numerous use cases simultaneously, making it difficult to provide meaningful disclosure while keeping privacy policies concise and navigable for customers.

A layered approach may assist, with high-level information provided in privacy policies and additional detail available through supplementary channels where appropriate. CALI also supports maintaining protections for commercially sensitive information and notes that disclosure should not require the release of proprietary system details.

Overall, these concepts remain too broad and would benefit from practical, industry-specific guidance. Limited examples drawn from sectors such as health or education are unlikely to assist APP entities in the insurance and financial services sectors. In our view, examples illustrating both in-scope and out-of-scope scenarios would support more consistent and confident application of the obligation, noting APP 1.9(d) provides only limited examples.

This would be particularly valuable across common insurance use cases, including underwriting, pricing, claims, fraud detection, customer engagement and generative AI tools. In particular, worked examples distinguishing between administrative functions, decision-support tools and systems that materially influence a decision outcome would provide much-needed clarity for industry.