7 July 2026

Office of the Australian Information Commissioner
3/175 Pitt St
Sydney, NSW 2000
Via email: privacyreformtranche1@oaic.gov.au

RE: FSC Submission on Automated Decision-Making Transparency Obligation (APP 1) Issues Paper

The Financial Services Council (FSC) welcomes the opportunity to provide feedback on the Office of the Australian Information Commissioner's (OAIC) Automated Decision-Making Transparency Obligation (APP 1) Issues Paper.

We acknowledge that the formal consultation period has now closed. However, as indicated in our earlier correspondence, we are providing the views of our membership on the important issues raised in the paper. Given the significance of the new automated decision-making (ADM) transparency obligation and its application across the financial services sector, we encourage the OAIC to take these views into account as it finalises its guidance.

The FSC supports the objective of promoting transparency, accountability and trust in the use of ADM technologies. Members recognise the importance of ensuring consumers have access to meaningful information about how personal information is used in decision-making processes that may materially affect them. Our submission focuses on ensuring the new obligation can be implemented consistently, proportionately and in a manner that reflects its policy intent.

Members have provided feedback across three primary areas:

- **Implementation timing and regulatory approach**, including the compressed timeframe between final guidance and commencement;
- **Scope and interpretation of APP 1.7**, including the definition of threshold concepts such as "making a decision", "substantially and directly related", "significantly affect rights or interests", and "arranged for"; and
- **Disclosure requirements under APP 1.8**, including the appropriate level of detail required in privacy policies.

These issues are addressed below.

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Summary of FSC Recommendations

Issue	FSC Position	Recommendation
Implementation timing and regulatory approach	Final guidance will be issued only shortly before commencement, significantly compressing implementation time.	Defer commencement of the obligation to allow adequate implementation time. If deferral is not feasible, adopt a facilitative and educative regulatory approach during the initial implementation period and provide early clarity on enforcement expectations.
Scope of the obligation and interpretation of APP 1.7	Greater certainty is required regarding the threshold concepts in APP 1.7, which determine when the obligation applies.	Provide clear guidance and examples that support a risk-based, outcome-focused interpretation including what is *not* intended to be covered.
Disclosure requirements under APP 1.8	Clarification is required regarding the level of detail expected in privacy policy disclosures.	Provide proportionality principles and practical examples of compliant disclosures.

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About the Financial Services Council

The FSC is a peak body which sets mandatory standards and develops policy for more than 130 member companies in one of Australia's largest industry sectors, financial services. Our full members represent Australia's retail and wholesale funds management businesses, superannuation funds, financial advice licensees and investment platforms.

The financial services industry is responsible for investing more than $4 trillion on behalf of over 16.9 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

The FSC welcomes the opportunity to meet to discuss the matters outlined in this letter. If you would like to arrange a meeting, please do not hesitate to contact me on [redacted] or [redacted].

Yours sincerely,

[redacted]

Policy Manager – Cross-Industry Regulation

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1. Implementation timing and regulatory approach

The FSC's most immediate concern relates to implementation timing.

The ADM transparency obligation was enacted through the *Privacy and Other Legislation Amendment Act 2024* with a commencement date of 10 December 2026. This provided an anticipated implementation period of approximately two years for entities to identify relevant systems, establish governance arrangements and update privacy policies and related disclosures.

However, the OAIC has indicated that final guidance is not expected until September 2026, leaving organisations with only a short period to implement the new requirements before they commence.

This creates a significant challenge. Compliance depends on interpreting several new concepts that determine whether the obligation applies in the first place. Until these are clarified, entities cannot reliably identify whether systems fall within scope or begin implementation planning. It also constrains internal legal, risk, compliance and governance processes – including senior management review and, where appropriate, board approval – which are required before updated privacy policies and related controls can be finalised.

The FSC therefore recommends that consideration be given to deferring the commencement of the obligation. We would welcome the opportunity to discuss an appropriate deferral period following consultation with our members.

If a deferral is not feasible, the FSC encourages the OAIC to adopt a facilitative and educative regulatory approach during the initial implementation period. Such an approach would appropriately recognise the novelty and complexity of the obligations, the dependency on late-stage regulatory guidance, and the limited time available for organisations to operationalise compliant frameworks.

2. Scope of the obligation and interpretation of APP 1.7

The FSC considers that greater clarity is required regarding the interpretation of the threshold concepts in APP 1.7. These concepts determine when the transparency obligation applies and are therefore fundamental to implementation. While the Issues Paper identifies a number of relevant considerations, further guidance, supported by practical examples, is needed to assist organisations in identifying in-scope systems and applying the obligation consistently.

(a) Meaning of "making a decision"

Members seek greater certainty regarding what constitutes "making a decision" for the purposes of APP 1.7.

This issue is particularly significant in financial services, where many high-volume operational processes – including applications, contributions, withdrawals and transfers – are executed through straight-through processing (STP). Although a relevant contract or trust deed may confer discretion on the trustee or product issuer, those processes are often implemented through predefined business rules.

The key question is whether the existence of contractual or trustee discretion is enough to take these processes outside scope, or whether the computer program itself determines the substantive outcome by automatically applying those rules to personal information.

The FSC considers that contractual discretion alone should not determine whether an automated decision has occurred. The focus should instead be on whether the computer program determines the substantive outcome with little or no meaningful human judgement.

Guidance distinguishing automated decision-making from routine administrative automation would materially improve regulatory certainty. In particular, practical examples illustrating when straight-through processing does – and does not – constitute "making a decision" would assist organisations to apply the obligation consistently.

(b) Meaning of “substantially and directly" related to making a decision

Once a “decision” is identified, further clarity is needed on the boundary between systems that make or determine that decision, and those that merely support it.

The FSC supports the OAIC's recognition that the obligation extends beyond decisions made entirely by computer programs. However, members are concerned that an overly broad interpretation could capture routine technological processes that merely support or facilitate decision-making without materially influencing the outcome.

The factors identified in the Issues Paper – including the nature of system outputs, the extent to which decision-makers rely on those outputs, and the capacity for meaningful human override –provide a useful framework. Consistent with these factors, the guidance should make clear that the central question is whether the system materially influences the decision outcome.

The obligation should not be triggered by the mere use of technology within a broader process. It should apply only where systems play a substantive role in determining the outcome.

This distinction would appropriately exclude supporting technologies—such as workflow tools, document generation, calculations and validation processes—that do not materially influence the outcome. The guidance would also benefit from examples of systems within scope, such as those that generate recommendations, classifications, eligibility assessments or risk scores relied on in decision-making.

(c) Meaning of "significantly affect the rights or interests of an individual"

The FSC agrees that the factors identified in the Issues Paper – including impacts on financial outcomes, the use of sensitive information and interactions with vulnerable individuals – are relevant considerations. However, further guidance is required regarding how this threshold should operate in practice within financial services.

Many automated processes necessarily affect an individual's contractual or beneficiary rights or financial interests to some extent. Without clearer guidance, uncertainty arises as to whether routine transactions – such as processing contributions, withdrawals or other customer instructions – are intended to fall within scope, or whether the threshold is intended to capture only decisions with genuinely significant consequences.

The FSC considers that the assessment should focus on the practical consequences of the decision. Whether a decision significantly affects an individual's rights or interests should be

assessed by reference to the nature and magnitude of its real-world impact, taking into account the surrounding circumstances, rather than solely the category of personal information used or the fact that automation is involved.

A risk-based, outcomes-focused approach, supported by practical examples, would better reflect the policy intent of the legislation and promote more consistent and proportionate implementation.

(d) Meaning of "arranged for"

Members consider that the meaning of "arranged for" is currently the area of greatest uncertainty within APP 1.7.

The concept is particularly difficult to apply where automated decision-making involves third-party open-source AI models, software vendors, SaaS platforms, corporate groups or multiple entities contributing to the same decision-making process.

The FSC is not seeking prescriptive rules for every scenario. Rather, organisations require clearer principles, supported by practical examples, to assist in determining when an entity will be regarded as having "arranged for" automated decision-making and how responsibility should be allocated where multiple parties are involved.

3. Extent of disclosure

Where APP 1.7 applies, APP 1.8 sets out the requirement to include certain information about ADM in privacy policies. Members support the objective of providing consumers with meaningful information about the use of ADM. However, further guidance is required regarding the appropriate scope and level of disclosure.

While the Issues Paper recognises the need to balance transparency and usability, members seek greater clarity regarding:

- the appropriate level of detail required in privacy policies;
- how to describe decision-making systems involving multiple technologies or models;
- the extent to which organisations should disclose:
    - categories of personal information used;
    - types of decisions affected;
    - level of automation involved;
    - likely consequences of those decisions;
    - available review, challenge or escalation mechanisms; and
- how transparency obligations should be balanced against commercial confidentiality, intellectual property and system security considerations.

Without clearer guidance, organisations are likely to adopt materially different approaches, resulting in privacy policies that are either overly detailed and difficult for consumers to navigate, or too high-level to meaningfully improve transparency or comparability.

The FSC encourages the OAIC to articulate proportionality principles, supported by practical examples, to promote consistent, meaningful and consumer-focused disclosures that remain faithful to the policy intent of the legislation.