# Automated Decision-Making Transparency Obligation (APP 1) Issues Paper

## Submission to the Office of the Australian Information Commissioner

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Thank you for the opportunity to provide comments on the Automated Decision-Making Transparency Obligation (APP 1) Issues Paper.

We are a group of scholars at Macquarie University Law School with a significant expertise and research track record in the regulation of emerging technologies in the government sector. Please see our comments on your questions below. In case of any queries, please feel free to contact us at [redacted].

## 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

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| **Please rank the factors using the above mentioned (1-5) ranking system and include any additional factors.** | 5 - Degree of reliance on the ADM system output;<br>4 - Ability and likelihood of human override over an ADM decision;<br>5 - Nature of the output (advisory vs determinative);<br>3 - Transparency and explainability of outputs;<br>4 - Integration of ADM into decision-making workflow;<br>- Other |
| **Free text comments** | We note that these words in the new ADM obligation in the Privacy Act 1988 (Cth), to take effect from 10 December 2026, potentially encompass a wide spectrum of different types of activities with different levels of human oversight. While the Explanatory Memorandum states that 'substantially' means that the activity done by the computer program is a key factor in facilitating human decision making, and 'directly' means there is direct connection between the thing done by the computer program and the making of the decision, these notes are broadly framed and will require the exercise of **substantial discretion and judgment**.<br><br>It is, for example, unclear how this concept will apply **where there are multiple stages in the decision-making tree, utilizing multiple** |

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| | **computer programs**. This concern has been previously raised by the Law Council in relation to the Privacy and Other Legislation Amendment Bill 2024. The Council recommended clarification on how APP 1.7 would apply where series of decisions are made including use of computer programs and commercial-in-confidence information. **OAIC guidance could show/add some multi-stage decision-making examples** to explain and depict at which stage automation occurred if possible and whether it was able to influence the final decision of the human involved.<br><br>It is also unclear how much automation will be considered 'substantial' in any specific context, or how this assessment will be made given the opacity of AI algorithms. To manage this legal uncertainty, we therefore recommend as much detailed criteria and guidance on this new provision as possible.<br><br>Some of the criteria proposed above look generally relevant but their meaning requires **further clarification and more specific examples** on how they could apply, to understand their suitability. For instance, what does "Degree of reliance on the ADM system output" mean? One possible application of this criterion is as follows: if the APP entity is required to rely on the ADM output, then it should be disclosed, but if APP entity can only consider the ADM output but may override its recommendation, then perhaps ADM role is not sufficiently substantial and thus does not have to be disclosed. We believe that such a possible interpretation of this criterion would be incorrect, and therefore OAIC should exclude such interpretation and clarify what they specifically mean by this criterion. Also, it is important to explain how it relates with other proposed criteria such as "Ability and likelihood of human override over an ADM decision" and "Nature of the output (advisory vs determinative)" – they seem to significantly overlap. This shows that **more guidance is needed on what exactly is meant by these criteria**.<br><br>**The relevance of other proposed criteria is also questionable**. For instance, what is meant by "Transparency and explainability of outputs" and why this might be important in assessing the significance of AI outputs? Whether or not an AI output is explainable does not appear to affect its significance. Some ADMS outputs might be unexplainable, but their role may be relatively insignificant in the decision-making process and therefore disclosure is not warranted. Conversely, an output might be fully explainable but still highly |

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| | significant, and thus disclosure should be required. For instance, radiology software that flags suspicious areas on a radiology image might not be fully and reliably explainable due to the complex neural networks behind it, however, we would argue its significance in the entire decision-making process is limited and it does not need to be disclosed in the Privacy Policy.<br><br>Similarly, it is unclear what the criterion "Integration of ADM into decision-making workflow" is supposed to mean and how it could be applied. Further explanation and examples are needed to assess whether this criterion could be helpful in applying APP 1.7.<br><br>We recommend that the OAIC consider **other possible criteria** that could help determine whether APP 1.7 applies, for example, whether ADM merely extracts/collates/provides the clearly defined information or recommends or makes a decision. It could be argued that merely extracting clearly defined information such as from databases and presenting it to the decision-maker is not substantial enough to warrant disclosure. However, if, in addition to providing information, the system also recommends a decision, then the role of ADMS might be sufficiently significant to warrant disclosure. This additional criterion might help distinguish between these two scenarios.<br><br>In addition, OAIC guidance could clarify that having a "human in the loop" is not sufficient to avoid the transparency requirements under APP 1.7. Whether there is a nominal human in the loop, or even a person who substantially reviews the recommendations or decisions made by the ADMS, the ADMS should still be disclosed if other elements of APP 1.7 are met. |

## 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.

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| **Would you consider NACIA's described uses of GPTea to be substantially and directly related to making decisions?**<br><br>**(Please provide yes/no)** | Yes. |
| **Can you provide your reasons for your response?** | The application of the ADMS in the above scenario, to help determine whether individuals are eligible for life-changing aged-care support is clearly substantially and directly related to the decision-making.<br><br>We find it problematic that this example is described as an 'edge' case when it is quite clear that the ADMS input into the decision-making is both substantially and directly related: it summarises the profiles *and* recommends the decisions.<br><br>If the system merely *extracts and list relevant information* which is then assessed by a human decision-maker, then its significance may be more limited and perhaps not substantial. However, summarising information that is relevant to the decision and recommending the decision are certainly significant contributions to the final decision. Generative AI systems that summarize information should not automatically be treated as low risk, as they can substantially affect a decision, even if they do not explicitly recommend the outcome. They may also contain errors and amplify bias.<br><br>Keeping in mind that generative AI systems will often be used for purposes such as providing summaries, we recommend that the OAIC provide clear guidance on whether such applications fall |

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| | within the scope of APP 1.7 and need to be disclosed.<br><br>The example described here as an "edge case" is akin to the example on Page 12 of the Issues paper, where it is suggested that if a pre-programmed formula in Microsoft Excel was used to score and triage people calling a domestic violence crisis hotline, which was a key factor in a human decision-maker making a decision of the order in which to attend to a person's call, this would be considered 'directly related' and 'substantially related' to making a decision. By analogy, if the decision recommended by the chatbot is a "key factor" in the making of a decision by a human, it would be both directly and substantially related. By contrast, if the chatbot merely collated information about applicants' ages for a human to review – akin to the description in the use of a pre-programmed formula in Microsoft Excel to calculate age in years from a date of birth - then possibly it would not be 'substantially' related to the decision.<br><br>The OAIC could usefully provide guidance on the intended difference between the words "directly" and "substantially", particularly as the Excel example in the issues paper appears at odds with the ordinary meaning of the word "directly". The Cambridge dictionary definition of 'directly', for example, is that the act occurs "without anything else being involved or inbetween". That is plainly not the way the term is used in the Excel example, where the Issues paper suggests that an early calculation of age would be directly related to the decision, despite being an early step in the process, with many further steps occurring 'in between' that step and the final decision.<br><br>Similarly, the Cambridge dictionary definition of "substantially" is "to a large degree". This suggests that an ADMS is only "substantially" related to a decision if the decision relies on the ADMS output or process 'to a large degree'. The question then becomes what a 'large' degree means.<br><br>Perhaps a more appropriate "edge case", to test the concept of 'large degree' would be an example where the chatbot does more than extract basic numeric information, but less than recommend a decision. For example, if a chatbot reviewed an application to extract relevant information against qualitative criteria, for analysis and decision by a human. That would appear to be |

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| | "directly" related, in that it is part of the chain of analysis that leads to a decision. Whether it is "substantially" related to the decision is less clear, and this is a point on which the OAIC could usefully provide further guidance. Similarly, the difference between the words "substantially" and "significantly" (as in "significantly affect the rights and interests") should be clarified, as the words are colloquially used interchangeably. "Significantly" is defined in the dictionary as "In a way that is easy to see or by a large amount". |

## 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

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| **Please rank the examples using the above mentioned (1-5) ranking system and include any additional examples.** | - Sensitive information;<br>- Vulnerable persons;<br>- Intrusive practices;<br>- Financial outcomes;<br>- Other. |
| **Free text comments** | We have difficulty in understanding how the proposed criteria would help APP entities assess whether their system is likely to "significantly affect rights or interests" of individuals. Further explanation and examples are needed to determine whether these criteria are suitable and in which situations.<br><br>For example, we do not think that being vulnerable necessarily means an increased likelihood that a decision would significantly affect a person's rights or interests, unless the decision itself was about access to something that the person was only entitled to because of their vulnerability. However, being vulnerable may make it more difficult to challenge decisions that are wrong.<br><br>We suggest that, instead of such criteria, the Commission consider a different approach. For instance, in assessing whether the ADMS is likely to "significantly affect rights or interests", the APP entity should consider:<br><br>i. What rights and interests are likely to be affected by the system, and are they significant? For instance, a significant effect could be found where an ADMS affects human rights, such as the right to freedom of movement (entry into a country through a visa process), the right to freedom of speech (where an ADMS does not allow a public protest), or the right of health (access to health service or the quality of the service). A |

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| | significant effect could also be found where an ADMS affects other significant interests, even if they do not amount to human rights, such as commercial or financial interests (for example, rejection of a loan or insurance). This could also include interests such as mental and/or psychological well-being, as well as individual or commercial reputation. (Note here that the right of privacy would always be affected by an ADMS covered by this provision as collection of personal information is a prerequisite. Thus, triggering a right of privacy should not lead to automatically establishing this criteria);<br><br>ii. Is the effect on the identified rights and interests significant? That is, will a specific ADMS decision significantly impact a particular right or interest? Does the individual have an easy alternative means to satisfy their need, for example, if they are denied service with one service provider, are they likely to get it with another one? The effect on rights and interests might depend on the affected person. For instance, it might be more significant if the person is vulnerable and cannot easily seek a remedy or obtain an alternative service (children, older people, people with disability or people with bodily or mental health issues).<br><br>iii. Could the use of an ADMS affect the rights and interests of an individual in the future, that is, beyond the immediate decision. For example, there might be a situation where there is no immediate denial of access to a service based on an automated decision, but that decision might still affect the person's future profile in such a way that it affects their rights and interests in the future. The scope and extent of a person's rights and interests can evolve dynamically, so it is important to assess an ADMS decision not only in relation to the immediate decision affecting an individual, but also in relation to its possible future implications. For example, an ADMS used to assess eligibility for housing support may not immediately deny access to housing assistance, but may assign the person a low priority score or categorise that person as having a lower level of need. That score or categorization may remain on the person's profile and be used in the future for similar or related assessments, including housing, emergency accommodation or related services. The factual illustration from Question 7 could also fall into this category where Marco orders the book |

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| | for $100. Marco was not denied immediate access as he was still able to order the book for $100. However, Daintree categorised Marco as a high-income customer, which may be used in future profiling and may therefore affect future pricing decisions, recommendations, promotions or eligibility for discounts. Both illustrations show that a decision made using an ADMS may or may not limit itself to immediate decisions, but could still affect the rights and interests of a person in the future. as well<br><br>These criteria would need to be assessed cumulatively. For example, if the right affected is significant but the actual effect is limited, the overall effect might be considered insufficiently significant, and disclosure therefore would not be warranted.<br><br>In addition to these individual-level considerations, the OAIC should also recognize that an ADMS may cause harm at a group level. While the Privacy Act focuses on individuals, an ADMS may significantly affect the rights or interests of protected or identifiable groups even if the effect on the rights and interests of each individual might be relatively modest. For instance, a welfare, housing or service-allocation system may rely on historical data that disadvantages Aboriginal and Torres Strait Islander peoples, leading to reduced access to services. While the impact on any one individual might appear limited, the cumulative effect of communities may be significant. The Commission should provide guidance that APP entities should consider the effects on group-level effects, and not only effects on individuals. |

## 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?**

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| **Can you provide your reasons for your response?** | We agree that, when assessing whether the effect on rights or interests is potentially significant, the vulnerability of affected people should be considered. This would include people with **attributes protected under discrimination law** such as age, sex, race, disability etc. Protection against discrimination is particularly important and complex as bias is often coded (invisibly) into ADMs. Whole categories of people can be vulnerable to decisions that negatively affect them as a result of this, and they may not be in a position to know whether there was something about their particular case, or an inherently biased feature of the ADM. Systems may indirectly discriminate against whole categories of people, by applying criteria that appear neutral on the face, but which are more difficult to a particular cohort to satisfy. It would be useful if the guidance could require entities to publish what steps (if any) they have taken to guard against this.<br><br>In addition to discrimination law attributes, **additional 'unprotected' attributes** might lead to vulnerability, for example, economic and financial situation such as people in debt being targeted with loan advertisements; physical and mental health issues that do not qualify as disability (such as an ADMS that rejects service to a person with health issues); or, in some cases, lack of technical understanding or literacy of AI. A class of persons with limited technical understanding may not have the knowledge to understand when an automated decision is undermining their interests or rights or how to seek redress if such an event occurs.<br><br>Further, a person can also be **vulnerable depending upon the situation he is in.** It may not have anything to do with gender, race, sex or other aspects of that nature. We have in mind situations where there is a power imbalance, for example, if the person has no option but to opt for the services that are being offered. So, they are not vulnerable due to their own characteristics but their dependency on the system makes or categorizes them as vulnerable. Accordingly, if it is a situation where the decision is automated and the person |

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| | cannot negotiate or opt-out, coupled with lack of alternative to choose from - the person could be considered vulnerable.<br><br>The OAIC guidance could classify the different reasons a person can become vulnerable, for example, protected and unprotected individual attributes and lack of alternatives, and how this could be or should be taken into account by APP entities when assessing whether the rights and interests of individuals are significantly affected by the AMDS decision. |

## 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

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| **Please rank the services/support using the above mentioned (1-5) ranking system and include any additional examples.** | - 5 - physical assistance/support;<br>- 5 - financial assistance;<br>- 5- access to educational services;<br>- 5 - 'in home services';<br>- 5 - access to essential banking and credit services;<br>- 5 - access to telecommunications;<br>- 5 - access to essential utilities; |
| **Free text comments** | This list could be supplemented with other services and support that could be considered as significant, for instance:<br>- health services;<br>- email, digital identity systems, platform access, professional networking;<br>- legal services;<br>- job seeking services;<br>- childcare, aged care, disability care;<br>- housing;<br>- family tax benefits;<br>- government grants;<br>- licenses (driving, trading, fishing etc); and<br>- identity documents/passports (and linked entry to/exit from the Country).<br><br>Further clarification should be provided as to what each of these encompasses. For instance, the list refers to "essential financial services", but it is not clear which of financial services are "essential" and which are not. Clarification is needed as to what "essential" means, including whether insurance such as health, car, home, pet, life, |

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| | accident or injury, and public liability insurance, as well as mortgages and loans are considered as essential. There is a risk that APP entities may apply a narrow definition of "essential" which will result in many ADMS systems not falling within the disclosure duty.<br><br>In addition, guidance could be provided on how to determine whether service is significant. "Significant service or support" should not be assessed only by reference to the type of service, but also by reference to the person's dependency on the services and availability of alternatives. For example, access to banking, health care, education, utilities, and housing are all instances where the impact of automated decision can be serious especially when the person has no alternative to choose from. Accordingly, there might be a difference between the automated decisions in services provided by a private entity as opposed to a government agency: since government services are normally provided by one agency only and there are no alternatives, the significance of the service increases.<br><br>We also note that the APP 1.7 refers to the rights and interests of "individuals". We suggest that the guidance should explain that this may also cover groups of individuals or collectives, as some of the interests are collective in nature. For example, financial liabilities or rights may be assessed by reference to a family rather than an individual, such as in relation to tax, Medicare or childcare assistance eligibility.). |

[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'?**

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| **Free text comments** | The most obvious frameworks are human rights frameworks, implied constitutional rights such as freedom of expression and freedom of political speech or communication, and administrative law rights such as rights of review of administrative decisions.<br><br>The OAIC could also consider competition and consumer protection frameworks when considering the meaning of "interests". For example, the UK Competition and Markets Authority (CMA) has done useful work on personalised pricing, profiling and consumer vulnerability, which shows that algorithmic systems can affect people in significant ways even when no clear legal right is affected. In practice, ADM systems can influence people's choices, access to opportunities and financial outcomes by ranking, targeting and differential pricing. These types of impacts are relevant when assessing whether a decision significantly affects an individual's interests under APP 1.7. |

# 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.

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| **Restricting access to financial products or healthcare would clearly be a decision which significantly affects the interests of an individual.**<br><br>**In the above Edge Case, would you consider the inflation of prices for a consumer product to have significantly affected the interests of Marco?** | Yes, we think there is a significant effect on interests. In the given scenario, the individual is asked to pay almost triple the price paid by another customer for the same product. That is a significant effect on his financial interests.<br><br>Overall, ADMS-enabled differential pricing practices, as described above, are problematic from several perspectives, and therefore their disclosure is important. For instance, can an accurate assumption be made on a person's interests or capacity to afford a product based on limited factors – in this case only one factor? Is using postcode to infer a person's wealth an appropriate basis for differential pricing? In this scenario, selected personal information is used to draw conclusions that may be incorrect. This results in the person being charged higher prices, which means they either experience significant financial consequences, or end up without the product or service they desire. |
| **If yes, at what amount would differential pricing be considered to have significantly affected the interests of an individual?**<br><br>**5% price difference, 20% price difference, or other (please specify amount)** | We do not think it is possible to answer this question in an evidence-based way. No specific number should be given here, and the entirety of the situation needs to be assessed when determining whether the effect is significant. . If the product is not essential and the price difference is minor, for example a 5% increase on AUD 100 purchase, the effect on financial interests may not be not very significant. However, even a modest percentage increase may significantly affect a person's interest where the pricing is applied systematically, affects a large number of consumers, or relies on factors that might operate as a proxies for person's vulnerability, wealth or other personal characteristics. In those circumstances, the disclosure obligation may also be more |

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| | likely to be triggered.<br><br>The assessment should instead depend upon the specific ADM system and consider the entirety of the situation. For instance, relevant factors could include the nature of the product or service, whether there is a genuine choice in the market, who the customers are and whether they are vulnerable, how much the price was increased, and how the increase affects the affordability of the product or service. The guidance should therefore avoid relying on a fixed percentage threshold alone and should require APP entities to assess the significance of differential pricing by reference to the full circumstances. Further, if an APP entity considers that a differential pricing model is unlikely to have significant effect, it should be required to explain the basis for that conclusion. |

| **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):** | |
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| **The dollar amount of differential pricing** | |
| **The significance of the product or service being purchased** | We are not sure about how to weigh these criteria as the line of questioning is not very clear for us.<br><br>Instead, we provide further criteria that could be considered by the Commission:<br><br>Apart from dollar amount of differential pricing and the significance of the product or service, one should consider other criteria too, for example, the effect of repeated ADM decisions involving differential pricing. A one-time decision may be acceptable to an individual, but if continued repeatedly, it can lead to substantial overpayment. It is therefore important for a person to know that differential pricing is occurring, even if it is a minor one – depending on the situation, the person might continue to opt for the service or product or choose an alternative.<br><br>Also, the use of such ADM systems might have a spillover effect on different/ related products and services in related platform markets. For instance, if a related service gets data that a customer X has been paying 5% higher price for one product, they might use this information to increase their prices for that customer too. As a result, ADMS-enabled differential pricing on one platform may lead to situation where the person is paying more for a lot of related products or services. This might be a competition law issue and may be outside the purview of OAIC guidance. However, such cumulative effects of such ADMS application on an individual's choice of service or product could be taken into account as they might increase the significance of ADMS output, and the ultimate effect on the financial interests. |

# 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.

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| **Should it be considered a 'decision' that Rafqa did not receive the Manscon job ad?**<br><br>**Please provide a Yes/No response** | Yes. |
| **Can you provide your reasons for your response?** | We consider these actions to constitute a "decision" because Manscon took a specific decision or action of not to send advertisements to female candidates or to send them to male candidates only. This led female candidates to be excluded from the next stage of the decision-making process, such as being considered for the job interview.<br><br>This relates to the remarks above about different stages of a decision-making process. There might be many different steps that lead to a final decision. The preliminary steps may be determinative of the final decision or outcome, or may strongly affect the final outcome. If this is the case, these preliminary steps or actions should be themselves be considered a "decision" for the purposes of APP 1.7.<br><br>The Privacy Act states explicitly that refusing to make a decision or failing to do a thing, can constitute a decision. This case illustrates how modern systems increasingly shape decisions through ranking, filtering, visibility decisions, rather than only through formal acceptance or rejection decisions.<br><br>Overall, the OAIC could make it clear that preliminary exclusion of individuals from further stages of a decision-making process is a |

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| | “decision”. |

## 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?

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| **Can you provide your reasons for your response?** | Keeping in mind the complexity of AI supply chain, there might be uncertainty as to when the entity is considered to be the one who "arranged for" a computer program to make a decision or do a thing that leads to the decision. The legislative intention appears to be that APP 1.7 applies to the user or deployer of an ADMS, but in some situations it might not be fully clear who it is.<br><br>For instance, an APP entity asks a third party to set up an online platform to sell its goods online, and the platform then uses software to apply differential pricing on certain consumers. Who has "arranged for" the use of this software and should comply with APP 1.7?<br><br>As another example, an APP entity contracts a hiring company to hire an employee for it and instructs that it wants a specific gender and prefers not to have employee of certain ethnicities. They agree that the hiring company will post the job advertisement on its website and use software to send targeted advertisements to candidates meeting the identified gender and race criteria, as well as exclude applications that do not fit these criteria. Who has "arranged for" this software to be used and who is liable under APP 1.7?<br><br>It would be useful to clarify who is considered as the APP entity responsible for "arranging for" in these situations.<br><br>The OAIC could clarify that an entity cannot avoid responsibility merely because the software was purchased from a vendor, the AI was embedded in a third-party product, or the outputs were generated by an external model. If the entity deploys, relies on, or benefits from the system, it should be treated as having "arranged for" its use. This is important for enhancing procurement governance.<br><br>It would be also important to address "shadow AI", for example, generative AI that is not formally approved by the entity, but being used by employees "in shadows" and influences decisions. Entities |

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| | could be expected to take reasonable steps to identify and monitor such uses, and set out policies and practices to ensure that employees use only ADMS approved by the entity. They should also be expected to mitigate the risks of AI tools being used “in shadows” without approval. |

## 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:

I. clearly articulated in plain language and easy to understand;
II. structured to enable consumers to request further information, where required;
III. appropriately tailored – sufficiently specific to be meaningful, while avoiding overwhelming levels of detail;
IV. organised so that similar information is grouped in a logical manner; and
V. framed in a way that allows the information and the decision to be challenged or contested.

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| **Having regard to the above considerations, is there anything additional that entities should disclose to provide effective and meaningful disclosures about ADM?** | Additional considerations and suggestions include:<br><br>i. information can be organised in a layered way to meet the information needs of different stakeholders, from the minimal and essential information presented in a clear, accessible language, followed by more detailed and complex information where required. Information should also be organized according to the significance with higher significance, or higher-risk information displayed upfront;<br><br>ii. information should be provided on when a human review is possible, how to request it, and how to challenge or contest an outcome; and<br><br>iii. information should be provided on whether impact assessments, independent audit, bias testing or similar reviews were undertaken, what governance arrangements are in place.<br><br>Consideration should also be given to whether different levels of obligations should attach to private sector and government entities. Government entities should ensure that the information is provided in such a way that facilitates access to administrative or judicial review mechanisms, and supports the transparency and FOI obligations that apply only to government entities. |