15 June 2026

Ms Carly Kind
Privacy Commissioner
Office of the Australian Information Commissioner

By email only: privacyreformtranche1@oaic.gov.au

Dear Ms Kind,

Arca response to Automated decision-making issues paper

Thank you for the opportunity to provide a response to the **Automated Decision-Making Transparency Obligation** issues paper (**Paper**).

Arca is an industry association focussed on the use of consumer data for credit and risk management. We bring together Australia's leading credit providers and credit reporting bodies to improve data protection and use and to make credit more visible, accessible and easily understood. Our vision is to make credit work for all Australians. Arca's Members collectively account for the vast majority of consumer lending in Australia.

Automated decision making is widely used by Arca's Members. Some example use cases include:

- credit providers deciding whether to provide credit, and if so, at what cost; and
- credit reporting bodies deciding whether a piece of information relates to a particular individual.[1]

We expect that our Members will need to update their privacy policies to comply with the new obligations relating to disclosure of automated decision making (the **ADM obligations**) before they commence in December 2026.

It is on this basis on which we provide feedback on the material in the Paper, as well as the timing and substance of guidance from the OAIC. We also bring our earlier submissions on the ADM obligations to the OAIC's attention, including **our submission to the Senate Legal and Constitutional Affairs Committee's inquiry** on the bill during its passage through Parliament.

Given the nature of our comments, we have not sought to answer every single question in the Paper. However, we have indicated where our feedback is especially relevant to one of those questions.

Timing of guidance

We note that the OAIC intends to release guidance on the ADM obligations by September 2026. The legislation containing those obligations received Royal Assent in December 2024, with commencement delayed by twenty-four months to allow entities to make changes to comply. No other provisions in the relevant Act received such a lengthy delayed commencement period.

A significant proportion of the delayed commencement period will have elapsed before the OAIC's views and expectations are known. Members have consistently advised us that early guidance from the OAIC on the ADM obligations is needed to ensure they meet the regulator's expectations and avoid costs from making multiple rounds of changes to their disclosures. Because of the delays to date, we recommend that the OAIC:

- publish its guidance on the ADM obligations as a priority (including before September 2026 if possible);

[1] This process, commonly known as 'matching', is an essential element of a credit reporting body collating the available information about a person and, based on that information, considering that individual's risk of default.

- take a facilitative approach to compliance during the first twelve months of the ADM obligations;[2] and
- consider what steps it could take in the future to ensure guidance is available more quickly.

Need for more guidance on extent of disclosures (Question 12)

Much of the material in the Paper focuses on whether the ADM obligations will apply to a particular decision. By comparison, there is relatively little discussion of the level of disclosure needed where those obligations apply.

For our Members, the application of the ADM obligations is often clear, and the greater need for guidance is around the extent of disclosures required. While we acknowledge the principles implicit in Question 12 and the need for a 'striking an appropriate balance', these statements alone do not provide Members with a clear indication of the OAIC's expectations or what an 'appropriate balance' looks like in practice. We consider that the final guidance will need substantially more material on the extent of disclosure required. Worked examples and case studies would be an especially helpful way to demonstrate the competing tensions of ensuring that disclosures are as simple as possible but also complete enough to ensure there is no risk of non-compliance.

As the OAIC considers what guidance to provide, we recommend that the guidance highlight that disclosures need not be very detailed or specific to comply with the ADM obligations. We hold this view because:

- In the absence of guidance, entities may focus on reducing their legal risk by making their disclosures as complete as possible, reducing their effectiveness as lengthy disclosures are confusing and often unread by consumers. Under this approach we note the disclosures would be very lengthy: credit algorithms often use hundreds of pieces of information as inputs.
- In the absence of more guidance, entities will likely take different approaches to how much information to disclose – divergence in industry practice will increase consumer confusion and uncertainty.
- Very detailed disclosures would be inconsistent with the objective of the ADM obligations to increase consumer understanding of how their information is used.

There are also good policy reasons to avoid overly detailed descriptions of automated decision making in the credit context. All credit providers use some form of automated decision making in their businesses of supplying credit. These credit algorithms are proprietary in nature. While the ADM obligations do not require the disclosure of commercial in confidence information, even detailed disclosures about precisely what information is used could be mis-used by competitor firms.

There are also moral hazard risks with very detailed disclosures about how credit algorithms work, such as:

- consumers seeking to falsify information based on what is used in credit decisioning processes to increase their chances of obtaining a loan they would otherwise be unable to afford, placing them at substantial risk of harm if/when they cannot make the repayments; and
- fraudsters similarly seeking to falsify information to obtain credit in someone else's name, with no intention of repaying the loan.

In addition to harming consumers, these situations also harm credit providers. Credit providers bear the cost of loans that cannot be/ are not repaid, and these situations increase the chance they are exposed to excessive credit risk outside their risk appetite or that tolerated by their regulators.

To that end, we recommend that the OAIC provide clearer guidance on their expectations about the extent of disclosures needed to comply with the ADM obligation, and in doing so avoid the need for very detailed or lengthy inclusions in privacy policies. This is particularly important as many of the other areas where we have feedback also relate to the extent of disclosures – please see below.

[2] This type of approach could be relevant where entities have made best efforts to comply, but need to make subsequent changes to their privacy policies to align with the OAIC's guidance.

Effect of minor ambiguities in disclosures

Some Members have concerns that questions about the quality and breadth of ADM obligation disclosures could be raised to dispute the underlying decision. These concerns relate to circumstances that go beyond the intent of the reforms to increase transparency. For example, debt management firms could assert that disclosures in privacy policies were insufficient in order to:

- dispute a decision about e.g. whether or not to grant credit; or
- pressure credit providers or credit reporting bodies to remove valid information from an individual's credit report.[3]

To that end, we recommend that the OAIC's guidance made clear that a minor, unintentional issue with disclosures about automated decision-making in a privacy policy does not invalidate the decision that has been made.

Application of guidance on arranging for automated decision-making (Question 11)

We note the commentary on page 20 of the Paper about how the ADM obligations apply where one party arranges for another party's computer program to make an automated decision. While we agree that being aware of the extent of automated decision making by third parties is reasonable, the OAIC's guidance should acknowledge that there are limits to the monitoring and oversight that can be expected. The details of some computer programs used by third parties are commercially sensitive. A service provider may also choose to use a third party because they do not have the in-house skills and expertise to make the underlying computer program; these limitations will also affect the degree of oversight that is possible.

Question 11 requests feedback on specific scenarios where further guidance may be required. One scenario that is relevant for the financial services industry is the use of automated decision-making by credit reporting bodies to provide credit scores which are then used as an input by credit providers in lending decisions. Further guidance would be welcomed in light of the issues outlined above.

We recommend that the OAIC's guidance elaborate on the extent of monitoring and oversight of third-party automated decision making.

Consumer vulnerability, applicability of ADM obligations and expectations around disclosure (Questions 4, 5 and 12)

We acknowledge the commentary on page 17 of the Paper that an individual's circumstances may influence whether a decision could reasonably be expected to significantly affect their rights or interests. Further guidance is needed on the implications of this commentary, specifically whether and how it affects which decisions need to be disclosed to comply with the ADM obligation.

Many entities could not reasonably be aware of a particular consumer's potential vulnerability at the time that their privacy policy is made available, and it is not possible to tailor these disclosures for specific individuals. Without further guidance, some entities may choose to disclose automated decision-making which would only significantly affect a very small number of individuals.[4] This approach would make disclosures less readable and useful for the vast majority of individuals, and make it more difficult to:

- satisfy the OAIC's expectations about the simplicity and clarity of disclosures; and
- achieve the ADM obligations' overarching policy objective of increasing transparency and consumer understanding.

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[3] Issues with poor conduct from these firms have been explored in multiple forums. See, for instance, Arca's submission to the Review of Australia's Credit Reporting Framework at page 78, where we highlight that multiple issues are often raised – without explanation or justification – to unduly pressure participants in the credit industry. The Final Report of that Review at page 80 also notes that incentives exist for these firms to prolong or extend disputes.

[4] Disclosures could even need to be made for *hypothetical* individuals i.e. in case a person with certain characteristics or vulnerabilities happened to use the entity's products or services.

As such, we recommend that the OAIC provide guidance about its views on the interaction of consumer vulnerability and the need to disclose material simply in a single privacy policy.

Thank you once more for the opportunity to make this submission. Please feel free to contact Arca if you have questions or would like further information.

Yours sincerely,

[redacted]
General Manager – Government and Regulatory