Australian Government
Department of Health, Disability and Ageing

Carly Kind, Privacy Commissioner
Office of the Australian Information Commissioner

By email: privacyreformtranche1@oaic.gov.au

Dear Commissioner Kind,

Automated Decision-Making Issues Paper
Our ref: LEX 56812

Thank you for the opportunity to comment on the Automated Decision-Making Issues Paper (**the Paper**) relating to the automated decision making (**ADM**) obligation introduced by the *Privacy and Other Legislation Amendment Act 2024* and commencing on 10 December 2026.

The Department of Health, Disability and Ageing (**the department**) welcomes the opportunity to provide comments on the Paper to inform the development of the Guidance for the ADM Obligation.

Timing of guidance

The department notes the Office of the Australian Information Commissioner (**OAIC**) intends to release guidance on the ADM privacy policy obligations by September 2026. If guidance is released in September 2026, there will be limited time for the department to incorporate the guidance in its preparation activities which could result in the department only being partially compliant by the 10 December deadline. The department respectfully requests that guidance is released as early as possible.

Clarity on interaction with other obligations

There are some similarities between the ADM obligations arising in relation to the privacy policy requirements and the requirements of the Information Publication

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Scheme (**IPS**) under the *Freedom of Information Act 1982* (**FOI Act**). The OAIC may wish to consider providing guidance outlining the similarities and differences in these obligations to help agencies ensure their IPS and privacy policies adequately cover the requirements under the FOI Act and the Privacy Act respectively.

Meaning of 'substantially and directly related to'

In relation to the example used on page 12 of the Paper, the department would appreciate guidance which addresses whether the use of the Microsoft Excel formula would be 'substantially and directly related to' the decision to approve or not approve the government payment if the age of the individual was one of the few criteria required to be satisfied before an official approves a government payment.

Meaning of 'arranged for' (Question 11)

The department would appreciate additional guidance on the term 'arranged for', particularly where it may relate to ADM operated by third-parties.

Clarity around the interaction with APP 1.3 and 'holds'

The department notes APP 1.3 requires APP entities to have a privacy policy about 'the management of personal information by the entity'. APP 1.4 sets out a non-exhaustive list of the information which need to be included in the policy relating to information the APP entity *collects and holds*. The department notes the new ADM obligation is not intended to limit the requirement of APP 1.3.

Page 20 and 21 of the Paper suggest that APP entities will need to consider whether they have 'arranged for' ADM, or whether an APP entity may simply be operating ADM.

It would be useful for the guidance to clarify if the new ADM obligations only apply where an APP entity has 'arranged for' the use of ADM by a third-party where the APP entity also 'holds' the personal information.

For example, an APP entity may contract with, or provide a grant to, a third-party to deliver services. The contract or grant agreement may in turn specify that the third party is responsible for managing personal information and the APP entity does not collect any personal information or physically hold any of the personal information. If

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the APP entity has arranged for the third-party to deliver services using ADM, the department would appreciate guidance on whether the ADM obligation would:

- only apply to the APP entity if the APP entity has constructive possession or control over the personal information; or
- apply to the APP entity even if the APP entity does not have constructive possession or control over the personal information.

Additional scenarios for guidance involving third-parties

The examples of where 'an entity has arranged for a computer program to make a decision' are helpful. The department respectfully considers that there are two additional scenarios which would benefit from additional guidance.

- First, where an APP entity has entered into a contract with, or provided a grant to, a third-party to deliver services. Would the APP entity be considered to have 'arranged for' the use of ADM in the following circumstances:
  - (a) The contract/grant does not specify whether ADM is to be used in delivering the services and does not require the third-party to notify or obtain consent of the APP entity to use ADM in delivering the services; or
  - (b) The contract/grant requires the third-party to notify and obtain consent of the APP entity to use ADM, and consent is provided by the APP entity; or
  - (c) The contract/grant outlines circumstances and/or types of ADM which the third-party may use to deliver the services; or
  - (d) The third-party has subcontracted the delivery of some of the services, and the subcontractor uses ADM in the delivery of those services.
- Secondly, a non-corporate Commonwealth entity (NCE) (**Agency A**) administers a particular Act which establishes a health program which provides payments to individuals. The health program is delivered by another NCE or statutory agency (**Agency B**) which collects personal information as part of the program and is responsible for making the payments. Would Agency A be considered to have 'arranged for' the use of ADM in the following scenarios:

(a) Agency A and Agency B have entered into a memorandum of understanding (MoU) or agreement for the program, but it does not specify whether ADM is to be used in delivering the program or whether the use of ADM is authorised by Agency A; or

(b) Agency A and Agency B have entered into an MoU or agreement, which states Agency B needs to notify and obtain the consent of Agency A if Agency B is proposing to use ADM; or

(c) Agency A and Agency B have entered into an MoU or agreement, which states Agency B needs to notify Agency A if Agency B is proposing to use ADM, but it does not require Agency A's consent; or

(d) There is no MoU or other agreement. Agency B just delivers the programs as it sees fit, including through the use of ADM.

Please contact me via infolaw@health.gov.au if you wish to discuss the department's comments on the Paper.

Yours sincerely



General Counsel
Commercial and Information Law

15 June 2026