SUBMISSION TO THE OAIC CONSULTATION ON GUIDANCE FOR TRANSPARENCY IN AUTOMATED DECISION MAKING

Submitter: [redacted]

To: Director, Privacy Reform Team, Office of the Australian Information Commissioner
By email: privacyreformtranche1@oaic.gov.au
Date: 20 May 2026

Dear Director,

I welcome the opportunity to respond to the OAIC's Issues Paper on Transparency in Automated Decision Making.

Part A: Background

1 I make this submission in an individual capacity. It draws on my engagement with Freedom of Information (FOI) processes, internal review pathways and tribunal review principles; my work through GlassCase™, a civic transparency project covering FOI redaction analysis, consideration mapping and institutional process analysis; and my current study of administrative and information law [redacted] at the Australian National University. The themes of this submission, namely timeliness, reviewability and recorded reasoning, sit in the same lane as my Submission 38 to the Senate Legal and Constitutional Affairs Committee inquiry into the *Freedom of Information Amendment Bill 2025* (Cth).

Part B: Executive Summary

2 Automated decision-making (ADM) systems do not only make decisions. They shape what later human decision-makers see, trust and record. If transparency does not reach those upstream moments, the person affected may never know that an automated score, flag or triage category changed the pathway of the decision before any "decision" was visible to them.

3 The new Australian Privacy Principle (APP) 1.7–1.9 obligations, introduced by the *Privacy and Other Legislation Amendment Act 2024* (Cth) and commencing 10 December 2026, will underperform if they are read as a privacy-policy drafting exercise. For decisions that may significantly affect a person's rights or interests, the guidance should treat the obligations as serving a **decision-visibility function**: privacy-policy disclosures should be specific enough to let affected individuals understand whether ADM was used, what role it played in the decision pathway, what kinds of personal information it relied on, whether human review was meaningful, and how to pursue access, correction, FOI and review rights. This approach aligns with the OAIC's broader position that ADM reform intersects with privacy, information access, accountability and effective regulatory oversight.

4 I have focused on guidance-level drafting because the legal obligation will be implemented through privacy policies, but its effectiveness will depend on whether entities can translate it into record-keeping, review and correction practices.

5 This submission responds to OAIC's Automated Decision-Making Issues Paper questions as follows:

- **Recommendation 1** addresses Question 1 (factors for assessing whether a computer program "substantially facilitates and is directly connected to" a human decision-maker's decision);
- **Recommendation 2** and the suggested wording address Question 10 (extent of disclosure);
- **Recommendation 3** addresses Question 6 (other legal frameworks the OAIC should have regard to);
- **Recommendation 4** addresses Questions 1 and 10 (human override, reliance on ADM output and disclosure sufficient to support challenge or contest); and
- **Recommendation 5** addresses Questions 3, 5 and 8 (the meaning of "significantly affect rights or interests", "significant service or support" and "making a decision").

6 I have not addressed every edge case separately; the recommendations apply to those edge cases structurally. I make five recommendations.

Part C: Key Comments

Recommendation 1: Capture decision-support systems that materially shape a human decision

7 The guidance should make clear that the ADM transparency obligation is not extinguished by a "human-in-the-loop" (i.e., a delegate, manager or officer who formally signs off on the decision) where the operation of a computer program has done a thing substantially and directly related to making the decision. A system may materially shape a decision pathway when it scores, ranks, triages, flags, filters or recommends an outcome that the human reviewer then accepts, narrows or accelerates.

8 *Concrete example*. A Commonwealth compliance triage tool flags a benefit recipient as "high risk". A human officer subsequently authorises an adverse administrative action. The agency may treat this as a human decision. But the system has done the substantive work of producing the risk frame the human now ratifies. The transparency obligation should apply where ADM materially influenced the pathway, not only where ADM made the final adjudicative step.

Recommendation 2: Require data provenance, not just data categories

9 The APP 1.7–1.9 obligations require APP entities to disclose, in their APP Privacy Policies, the kinds of personal information used in the operation of relevant computer programs, the kinds of decisions made solely by the operation of those programs, and the kinds of decisions for which the operation of those programs does a thing substantially and directly related to making the decision. The guidance should interpret "kinds" with sufficient granularity that disclosure is operationally useful. Generic phrases, such as "we use account history to assist in decision-making", give an affected person no purchase to test the integrity of the underlying record.

10 ADM systems are particularly vulnerable to what I would call low-provenance **personal information**: personal information whose source, reliability, currency, completeness or relevance is unclear, such as unverified third-party complaints, historic adverse notes, inferred attributes, behavioural risk indicators, location-derived signals or proxy variables. Where

ADM systems rely on these categories, the guidance should expect disclosure to be specific enough for individuals to assess whether the information used may be inaccurate, out of date, incomplete, irrelevant or misleading, and whether APP 13 correction rights may be engaged.

11 *Concrete example.* A large APP-entity employer's ADM-assisted recruitment tool weights internal conduct notes alongside structured employment history. A disclosure that the system uses "employee records" is technically true and practically opaque. A disclosure that the system may use internal conduct notes, complaint-derived information or inferred behavioural indicators puts the applicant in a position to assess whether the personal information used may be inaccurate, out-of-date, incomplete, irrelevant or misleading, and whether APP 13 correction rights are engaged.

Recommendation 3: Link ADM transparency to access, correction, FOI and review rights

12 Transparency is not an end in itself. Where ADM affects rights or interests, the obligation supports practical legal pathways: APP 12 access, APP 13 correction, FOI access for Commonwealth agencies (or State and Territory equivalents where applicable), internal review, merits review and complaint processes. The guidance should expressly frame ADM disclosures as part of that infrastructure rather than as a free-standing notice.

13 This matters because ADM scales the consequences of bad records. If the input data contains stale, untested, incomplete, irrelevant or misleading adverse information, the output reproduces that defect at volume. Without disclosure specific enough to identify the relevant information pathway, the affected person cannot meaningfully exercise privacy, FOI, correction or administrative-review rights.

14 *Concrete example*. A person is denied a Commonwealth statutory entitlement following ADM-assisted processing. An FOI request under the *Freedom of Information Act 1982* (Cth) returns the decision letter, but there is no clear public information about whether ADM was used, the type of ADM involved, the kinds of decisions it supports, or the policies governing when and how it informs decisions or recommendations affecting the public. The right of review survives in form but is hollowed out in substance. This reflects the transparency gap identified by the OAIC's January 2026 report *Automated decision-making and public reporting under the Freedom of Information Act*.

Recommendation 4: Human review should be documented, not merely asserted

15 The guidance should discourage entities from relying on generic statements that "all final decisions are made by humans". For decisions that may significantly affect rights or interests, meaningful disclosure will often depend on whether the entity has records capable of showing:

- the ADM output or recommendation, with timestamp;
- the categories of personal information the system relied on;
- the role, function or authority of the human reviewer;
- whether the reviewer accepted, modified or departed from the system output, with a proportionate record of the basis for that action where the decision may significantly affect rights or interests;
- whether the affected person was informed that ADM materially contributed to the decision.

16 The purpose is not to convert every ADM use into a procedural-fairness exercise. The purpose is to stop "human-in-the-loop" becoming a compliance shield. Human review is meaningful only where the reviewer can in fact understand, test and depart from the system output, and where there is a discoverable record of that engagement.

17 The Robodebt Royal Commission, at Recommendation 17.1, called for a consistent legal framework for automation in government services. Where ADM is implemented, it recommended a clear path for affected persons to seek review, departmental website information explaining in plain language that ADM is used and how the process works, and publication of business rules and algorithms for independent expert scrutiny. The OAIC's January 2026 report cites this as part of the public-trust frame for ADM transparency. The privacy-policy disclosures contemplated by APP 1.7–1.9 should therefore help affected persons identify whether ADM may have materially contributed to a decision, and what access, correction or review pathways may need to be pursued.

Recommendation 5: "Significantly affect rights or interests" should include pathway-shaping decisions

18 The guidance should interpret "significantly affect the rights or interests of individuals" broadly enough to capture decisions that do not finally determine a legal right but materially alter the person's pathway through an administrative or commercial system. Many harmful ADM outputs occur upstream (filtering, ranking, escalation, triage) before any reviewable "decision" is issued. In the public sector, this concern also intersects with the treatment of unpublished operational information under s 10 of the *Freedom of Information Act 1982* (Cth): s 10 is directed to the prejudice that may arise where an agency applies an unpublished rule, guideline or practice that a person could lawfully have avoided had it been published.

19 A private-sector recruitment system that ranks an applicant so low they are never seen by a human has affected their interests. A Commonwealth compliance system that places a person in an enhanced scrutiny pathway has affected theirs. A Commonwealth service-delivery system that diverts an applicant from ordinary processing into intensive verification has affected theirs.

20 An overly narrow reading would capture only the final adjudicative step and leave the actual sites of automated influence untouched.

Part D: Suggested Wording for the OAIC Guidance

21 The following is offered as drafting starting points the OAIC may wish to adapt:

For decisions that may significantly affect an individual's rights or interests, APP entities should ensure privacy-policy disclosures explain not only that automated decision-making is used, but the role the system plays in the decision pathway, including whether the system scores, ranks, flags, triages, recommends or determines outcomes.

Where ADM uses personal information to support significant decisions, APP entities should describe the kinds of personal information used with enough specificity to allow individuals to understand whether complaint records, behavioural records, inferred attributes, third-party information, historical administrative records or other potentially adverse personal information may have contributed to the decision.

The involvement of a human decision-maker does not, by itself, remove the need for ADM transparency where the automated system materially shaped the decision pathway. APP entities should consider maintaining records showing the system output, the human review undertaken and the relationship between the two.

ADM transparency should be framed as supporting the practical exercise of privacy, correction, FOI, complaint and review rights. Disclosures should be clear enough to help affected individuals identify whether they may need to seek access to, or correction of, personal information used in ADM.

Part E: Closing

22 The new ADM transparency obligation is a significant reform. Its practical value will depend on the specificity of the OAIC's guidance. If entities can satisfy the obligation with a generic privacy-policy clause, individuals will be told that ADM exists without being able to understand how it affected them, whether the underlying information was reliable, or how to challenge it. For high-impact decisions, transparency should support decision visibility: clear disclosure of the role of ADM, supported by recordkeeping practices that allow the person to test the result where access, correction or review rights are engaged. That approach preserves flexibility for entities while making the obligation useful for the individuals it is intended to protect.

23 This approach is also consistent with the OAIC's announced update to Part 13 of the FOI Guidelines, which will expressly include ADM as an example of "operational information" for the purposes of the Information Publication Scheme (IPS). The OAIC has stated that this update will include further detail about information agencies should publish about ADM to help the public understand how ADM is being used and how it may affect them. The new APP 1.7–1.9 transparency obligations and the IPS publication regime can reinforce each other, but they will do so only if the guidance for both is operationally specific.

Yours sincerely,

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