MTA Submission
Automated Decision-Making Transparency Obligation Issues Paper consultation
Office of the Australian Information Commissioner

About Middle Tech Australia

Middle Tech Australia (MTA) brings together companies that occupy the space between start-ups and Big Tech. Our members build products that bring people together; enable conversations, creation and commerce; drive productivity; and support small businesses. Our aim is to be a constructive contributor to effective, evidence-based policymaking that supports investment and the services Australians rely on, and we are committed to an open and innovative digital economy that works for Australian users, businesses, and the public interest. More information, including the principles that guide our engagement, can be found as an appendix to this document.

Our approach to this consultation

Our members are committed to deploying technology responsibly and support transparency about automated decision-making (ADM). Middle Tech Australia has an enduring interest in guidance that is clear, proportionate, and operable: an obligation calibrated so that it delivers meaningful transparency to Australians without sweeping in routine product functionality or undermining the systems that keep users safe. The points in this submission follow from that position.

1. Proportionate and evidence-based

Good regulation is calibrated to the actual risks and impacts of different products and services, and its thresholds should flow from that objective rather than a one-size-fits-all template. This principle has three consequences for the ADM Transparency Obligation.

First, the threshold of significant effect should be set high. The obligation applies where a decision "could reasonably be expected to significantly affect the rights or interests of an individual." We support anchoring that test to the standard adopted in comparable regimes — the genuine legal or similarly significant effects captured by the GDPR, where the effect must be sufficiently great to be worthy of attention and capable of significantly affecting a person's circumstances, behaviour or choices. A threshold pitched below that level would draw in ordinary digital interactions that no reasonable user would regard as significant, diluting the value of disclosure for the decisions that genuinely matter.

Second, the everyday curation of content does not, of itself, cross that threshold. The Explanatory Memorandum suggests that targeting individuals with content and advertisements may have a significant effect where it results in differential pricing or limits access to employment. We accept that those consequences — genuine differential pricing for significant goods or services, or genuine exclusion from an employment opportunity — can be significant. But the significance lies in the consequence, not in the personalisation that produces it. The ordinary ranking, recommendation and delivery of content organises a person's experience of a platform; absent a material effect of the kind the Memorandum describes, it does not significantly affect their rights or interests and should not be treated as if it did. We therefore ask the OAIC to confirm that the

targeting examples are confined to their stated consequences, rather than read as bringing such personalisation within scope. On pricing specifically (Question 7), significance turns on the nature of the product or service and the materiality of the effect, not on a fixed percentage difference in the abstract; and where conduct is genuinely discriminatory, anti-discrimination law, which the Paper rightly identifies as operating alongside this obligation, is the framework that applies.

Third, proportionality must protect the systems that protect users. Much of the automated work our members do is in trust and safety: detecting child sexual abuse material, fraud, scams, spam and coordinated abuse. Even high-level disclosure of how these systems operate can hand bad actors the information they need to evade them, and the resulting harm falls on the very users the systems exist to protect. Guidance should therefore provide a clear exception: disclosure should not be required where it would compromise the integrity or effectiveness of a system, or increase the risk of serious harm to individuals. This is consistent with the Explanatory Memorandum's exclusion of commercial-in-confidence information and with the OAIC's own recognition that disclosure should strike a balance rather than overwhelm. A transparency obligation should not become a roadmap for those seeking to harm Australians online.

2. Consultative, stable and predictable

Good policy is made with the sector, not just for it, and stable frameworks support the investment needed to deliver digital services. We welcome the OAIC's decision to consult before finalising its guidance, and we encourage it to engage the full diversity of in-scope services as the guidance develops.

Stability also has a practical dimension here. ADM systems are updated frequently. Guidance that demanded highly specific, system-by-system disclosure would require constant revision of privacy policies, imposing disproportionate effort for little gain to consumers. Guidance that sets clear, durable expectations — and confirms that disclosure operates at the level of the kinds of decisions and information involved — will be more workable and more stable over time.

3. Clear objectives, flexible means

Effective regulation defines the ends it seeks clearly, then leaves industry room to determine how to meet them. Applied to the threshold question, that supports a two-tiered approach: a clear, non-exhaustive list of decision categories presumed to meet the significance threshold, with a high bar for anything outside it. International practice offers a ready model — the amended California Consumer Privacy Act treats financial or lending services, housing, education, employment, and healthcare as the categories where ADM constitutes a significant decision, and the examples in Question 6 point the same way. A defined core gives entities certainty and concentrates compliance effort where effects are genuinely significant; a high residual bar preserves flexibility for genuine edge cases without generating broad uncertainty. This is the principles-based approach applied to a threshold, not a departure from it.

The same logic favours clarity on where automation stops and human judgement begins. Where a person reviews an automated output, understands it, weighs it against other information, and has authority to decide, the decision should be treated as a human one. Clear guidance on that point

would resolve the kind of case the Paper raises in its generative-AI edge case, and would give entities a workable basis on which to assess their systems.

4. Harmonisation, at home and abroad

Australia's digital sector is governed by a growing number of overlapping instruments, several of which now bear on ADM — the Western Australian privacy regime, the Attorney-General's Department's work on government use of ADM, and the draft Children's Online Privacy Code among them. Coherence across them should be a design goal, not an afterthought.

Two points of coherence matter most. At home, the ADM guidance and the Children's Online Privacy Code should be consistent and proportionate when read together, so that members serving younger users face a single coherent set of expectations rather than divergent ones. And abroad, alignment with established frameworks such as the GDPR and CCPA should be pursued where it reduces compliance burden and supports the objective of the obligation, allowing businesses that operate across jurisdictions to develop consistent disclosures rather than reconciling conflicting ones.

5. An open and competitive economy

Open and competitive markets are best fostered when regulation reflects the nature and scale of the services it covers. Two features of the guidance would serve that end.

Disclosure should be capable of being made at a consolidated, high level — grouping tools that produce substantively similar decisions using similar kinds of personal information — rather than through a use-by-use breakdown. And guidance should guard against an outcome in which entities that disclose more fully appear more intrusive than competitors who disclose less, which would penalise transparency and reward strategic under-disclosure. Undifferentiated, granular obligations also bear most heavily on mid-market providers, who carry the same requirements with smaller compliance functions. Regulation calibrated to scale avoids both problems.

In summary

We ask the OAIC, in developing its guidance, to:

- Set the significance threshold high, anchored to the genuine legal or material effects captured by comparable international regimes.
- Confirm that routine content ranking, recommendation and ad delivery do not significantly affect rights or interests absent a material effect of the kind the Explanatory Memorandum describes, and avoid a fixed monetary threshold for differential pricing.
- Provide a clear exception so that disclosure is not required where it would compromise the integrity of trust-and-safety, fraud or other protective systems, or increase the risk of serious harm to individuals.
- Give certainty through a non-exhaustive list of decision categories that meet the threshold, with a high bar for those outside it, and clarify the degree of human involvement that keeps a decision a human one.

- Ensure the guidance is coherent with Australia's other digital instruments, in particular the draft Children's Online Privacy Code, and aligned with international approaches.
- Permit consolidated, high-level disclosure proportionate to the scale and dynamism of the systems involved.

Appendix A: About Middle Tech Australia

Middle Tech Australia (MTA) brings together companies that occupy the space between start-ups and Big Tech. Our members build products that bring people together; enable conversations, creation and commerce; drive productivity; and support small businesses.

Our aim is to be a constructive contributor to effective, evidence-based policymaking that supports investment and the services Australians rely on. We are committed to an open and innovative digital economy that works for Australian users, businesses, and the public interest.

The following principles guide our engagement:

1. Proportionate and evidence-based
Good regulation is calibrated to the actual risks and impacts of different products and services. Platform design, operating models, business size, and user characteristics all matter. Where new regulation is proposed, its objective and rationale should be clearly articulated and supported by evidence. Its definitions, thresholds, obligations, and penalties should follow from that objective, not from a one-size-fits-all template.

2. Consultative, stable and predictable
Good policy is made with the sector, not just for it. Middle-market voices are essential to good policy design, as they bring operational expertise on what it takes to build, operate, and scale digital services in Australia. Clear, stable regulatory frameworks support business planning and the investment needed to deliver digital services. Consultation should engage the full diversity of in-scope services early and transparently.

3. Clear objectives, flexible means
Effective regulation defines the ends it seeks clearly and specifically, then leaves industry room to determine how to meet them. Regulators and industry achieve more in partnership when the result is well-defined and the path to it is left open.

4. Harmonisation, at home and abroad
Australia's digital sector is governed by a growing number of overlapping instruments. Regulation should be coherent across them, and aligned with international standards where this reduces compliance burden and supports the objective of regulation. Coherence should be a design goal, not an afterthought.

5. An open and competitive economy
Australia's digital economy should enable companies of every size to compete, innovate, and grow. Open and competitive markets are best fostered when regulation is reflective of the nature and scale of the services it covers. It supports choice for Australians, lets companies invest in the tools and approaches best suited to their users, and helps them adapt quickly to emerging risks.