Response to OAIC's Automated Decision-Making Transparency Obligation (APP 1)
29 June 2026

Introduction

Google welcomes the opportunity to provide feedback on the Office of the Australian Information Commissioner's (**OAIC**)'s Automated Decision-Making (**ADM**) Issues Paper (**Issues Paper**). We appreciate the OAIC's efforts to provide clarity in this complex and rapidly evolving area.

Overall, we feel that the Issues Paper raises important issues for clarification, which will be valuable in aiding the development of the OAIC's Guidance for Transparency in Automated Decision Making and informing the interpretation of the obligations under the new APPs 1.7-1.9 ("**ADM obligation**").

Our response sets out a number of observations aimed at ensuring practical certainty and operational workability for organisations, as well as greater alignment with international frameworks such as the UK General Data Protection Regulation (**UK GDPR**).

Our comments include our recommendations for how the OAIC can ensure individuals are appropriately protected where decisions with significant and meaningful impact are taken using automated processes, whilst simultaneously supporting responsible innovation.

Responses to Issues Paper Questions

OAIC instructions To make this consultation more accessible to you we have included different response options throughout the questions, including, free text, yes/no, agree/disagree. We have also included a 5-point ranking scale as follows: 1. Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; and 5. Strongly agree

A. Substantially and directly related to making a decision

Questions in Issues Paper addressed in this response
1. 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 Please rank the factors using the above mentioned (1-5) ranking system and include any additional factors.
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. 2. Would you consider NACIA's described uses of GPTea to be substantially and directly related to making decisions? Yes/No 3. Can you provide your reasons for your response?

Meaning of "substantially and directly"

We note that the inclusion of the "substantially and directly" limb already goes significantly beyond the formulation in other international benchmark legislation, such as the UK GDPR, which applies only to decisions based *solely* on automated processing. Accordingly, we recommend that this limb should not be interpreted broadly, or else it could potentially apply to any decision which involves the use of automated processes in any way, even if it is trivial or non-consequential. In light of this, we believe that the following factors are critical in determining whether a computer program substantially facilitates and is directly connected to a human decision-maker's decision:

- Ability and likelihood of human override over an ADM decision - if a human has oversight and makes the final decision, this should not be considered as using ADM to substantially and directly make a decision.
- Nature of the output (advisory vs determinative) - if a computer program's output is simply *advisory* and not determinative, this should not be considered as using ADM to substantially and directly make a decision.
- Integration of ADM into decision-making workflow - if ADM is integrated into a decision-making workflow but only applies pre-determined, human-designed criteria

(e.g. a decision tree scenario where a human dictates a clear formula to be followed by the computer program), this should not be considered as using ADM to substantially and directly make a decision.

Fictional Edge Case

Applying this approach, Google does not consider the use case described in the Fictional Edge Case to be substantially and directly related to making decisions. This is because the nature of the output is *advisory* only (i.e. it provides summaries and recommendations), and human staff always have oversight and ultimately make the final decision.

To further illustrate how the application of pre-determined, human-designed criteria falls short of this threshold, consider a university application tool that scans applications to verify minimum academic qualifications, the right to study in Australia, completion of mandatory fields, and a passing score on a multiple-choice test. None of this requires any form of evaluation or analysis of the applicant - the tool is simply applying a set of binary rules. Unless the tool also performs some qualitative analysis of the application, this should not be considered as ADM.

B. Meaning of significantly affect rights or interests

Questions in Issues Paper addressed in this response
4. 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. Please rank using the above mentioned ranking system and list any additional factors.
5. 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?
6. 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? 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. Please rank using the above mentioned ranking system and add any additional factors.
7. Are there any other legal frameworks or policies that the OAIC should have regard to in considering the meaning of ‘rights’ and ‘interest’?
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 on Daintree when his book-club buddy, Charles, from a country town, paid only $35 from Daintree. 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. 8. Restricting access to financial products or healthcare would clearly be a decision which significantly affects the interests of an individual. In the above Edge Case, would you consider the inflation of prices for a consumer product to have significantly affected the interests of Marco? If so, at what amount would differential pricing be considered to have significantly affected the interests of an individual? For example, 5% price difference, 20% price difference or higher.
9. In judging whether differential pricing significantly affects rights or interests, how important would you consider the following factors on a scale from 1 to 6 (with 1 being not at all important and 6 being very important): a. the dollar amount of differential pricing b. the significance of the product or service being purchased?

Meaning of “significantly affects rights or interests”

The meaning of “significantly affect rights or interests” should be aligned with the approach in other international benchmark legislation, including the UK GDPR, which applies to decisions which produce *legal effects* or similarly affect the data subject. This also aligns with the meaning of “interests” in other Australian laws, which set a high bar - for example:

- In administrative law, procedural fairness assessments consider adverse effects on interests, which include legal, personal liberty, status, preservation of livelihood, personal and commercial reputation, property, employment, immigration, financial, commercial, and a children's interest in the provision of a supportive, safe and secure home.
- In the Guidelines on Procedural Fairness, the Western Australian Ombudsman provides examples of decisions that negatively affect someone's interest, which include cancelling a licence or benefit, disciplining an employee, imposing a penalty and publishing a report which may damage a person's reputation.

Further, the Explanatory Memorandum expressly recognises that the effects must be "more than trivial" and the examples given also provide a similarly high bar - for example, a decision to grant admission to a country or entitlement to a housing benefit, rights under a contract (e.g. an insurance policy), access to a healthcare service, or access to *significant* goods or services or employment opportunities.

We recommend that the OAIC should clarify that for a decision to "significantly affect the rights or interests" of an individual, it must have a direct, tangible and meaningful impact on the individual. This phrase should not be broadly interpreted, as a broad interpretation would risk encompassing everyday user interactions, which would contrast with the approach in other international frameworks, as well as the material impacts listed in the Explanatory Memorandum, such as access to housing, healthcare and employment.

Guidance from other international regulators offers some useful illustrations of where this line should be drawn in practice. For instance, the ICO's recently published draft guidance on ADM contains an instructive example regarding a video-on-demand service. The ICO notes that while recommending content to a user based on their previous viewing habits is a solely automated decision, it typically does not reach the threshold of significantly affecting an individual's rights or interests. We encourage the OAIC to adopt a similar standard for content recommendations in its ADM guidance.

Furthermore, a decision should not be considered to "significantly affect the rights or interests" of an individual if it only affects access to or use of a non-essential or non-critical service. For example, if a service provider uses an automated process to detect fraud and then suspends an account based on the suspected fraudulent activity, this should not be considered to "significantly affect the rights or interests" of an individual unless the account is required to access an essential service, such as access to a healthcare service or to essentially banking services.

Operational challenges

While protecting vulnerable persons is an important policy objective, anchoring the "significantly affects" threshold to the subjective or unknown vulnerabilities of users/customers presents substantial operational and privacy risks. For most organisations, there is no reliable, objective mechanism to identify whether a user/customer belongs to a vulnerable cohort, nor to predict how an automated output might interact with their undisclosed vulnerability. In order for organisations to reliably identify such vulnerabilities, they would need to collect and analyse additional - and potentially sensitive - personal information about users/customers, which runs contrary to the principle of data minimisation.

To clarify, Google strongly supports protecting vulnerable users online. Our comments are simply intended to ensure that the ADM provisions remain clear, predictable, consistent with the data minimisation principle and focused on the high-impact decisions they were intended to address. Accordingly, we encourage the OAIC to preserve an objective standard for ADM in the guidance, so that decisions are not captured under the ADM obligation simply on the possibility of a very small subset of individuals being impacted due to unknown vulnerabilities.

Similar operational challenges exist relating to the processing of sensitive information. In particular, while organisations will often ingest sensitive information as it is present in the input data provided by users/customers, such information does not form the basis for decisions. For example, a bank using an automated loan assessment tool might review bank statements to verify income and regular expenditure. Although bank statements may contain sensitive information (e.g. payments to medical specialists, religious organisations, etc.), the automated assessment is based purely on transaction amounts and patterns, rather than the sensitive nature of payments. Accordingly, we encourage the OAIC to acknowledge that incidental processing of sensitive information should not trigger the ADM regime.

C. Meaning of making a decision

Questions in Issues Paper addressed in this response
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. 10. Should it be considered a 'decision' that Rafqa did not receive the Manscon job ad?

The meaning of a "decision" should distinguish between systems that follow pre-determined, pre-programmed rules and those that perform their own form of evaluation or analysis of personal information to draw a conclusion or outcome.

In practice, many automated processes apply pre-determined human-designed criteria (e.g. decision trees or policy rule sets) to factual inputs. This may involve some form of low-level interpretation of natural language or other media to determine if the criteria has been met. These programs are not, however, independently evaluating or analysing personal data to reach a decision about an individual - they are simply applying rules which are already pre-determined by a human. For example, if a business pre-determines which form of payment cards it accepts and the computer program simply applies this rule, then there is no automated decision being made.

Accordingly, we would welcome acknowledgement from the OAIC that more complex decision-making processes will still **not** fall within scope of the ADM obligation provided that they are following multiple pre-determined rules (i.e. essentially executing a decision tree).

Further, the meaning of "decision" in other Australian frameworks requires an active decision to be made or action to be taken (or not taken). For example, the decisions included under section 9 of the *Administrative Review Tribunal Act 2024* all include specific actions such as to make, suspend, revoke or refuse an order, direction, licence or similar, impose a condition or restriction, make a declaration or demand, retain or deliver up an article, or do or refuse to do any act or thing. These all involve a discrete, tangible action to be taken or not taken.

We would therefore welcome clarification from the OAIC that a decision involves an active decision to be made. For example, if an ad for bank loans is shown, the seeing (or not seeing) of the ad itself should not be a decision (or be considered to significantly affect an individual), while the decision to grant or refuse the bank loan itself may be.

Applying this approach, Google does not consider that a decision has been made in the Fictional Edge Case described above.

D. Meaning of arranged for

Questions in Issues Paper addressed in this response
11. Are there any scenarios relevant to the meaning of 'arranged for' that you consider require guidance? If so, why?

We support the OAIC's distinction between the entity that arranges for the ADM and one that simply operates the computer program used in the ADM. In this context, we would welcome

further guidance from the OAIC that an entity will be considered only to be *operating* ADM (and not arranging for it) where it is simply a service provider to another entity which chooses *how* to utilise those services - including, for example, adtech service providers who simply place ads based on the advertisers' and/or publishers' directions.

We would also recommend including guidance that when customers or users choose to deploy or use generative AI or agentic AI tools, the provider of the AI tool or model will not be considered to have arranged for the use of ADM.

E. Extent of disclosure

Questions in Issues Paper addressed in this response
12. 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: - clearly articulated in plain language and easy to understand; - structured to enable consumers to request further information, where required; - appropriately tailored – sufficiently specific to be meaningful, while avoiding overwhelming - levels of detail; - organised so that similar information is grouped in a logical manner; and - framed in a way that allows the information and the decision to be challenged or contested. Having regard to the above considerations, is there anything additional that entities should disclose to provide effective and meaningful disclosures about ADM?

We support the approach that disclosures should not be overly technical or complex, should be articulated in plain language and easy to understand, and should not be overwhelming. However, we recommend clarification that the reference to the disclosure being "tailored" does not require tailoring the notice to specific individuals or groups of individuals. Rather, the OAIC should clarify that this means that organisations retain the ability to tailor their disclosures in a way which best aligns with the nature of the ADM and the organisations' activities and services more broadly, in a way which is most appropriate and accessible to its general user base.

We also recommend that there should not be prescriptive requirements on the information which needs to be provided, itemised descriptions or rigid structural formats. Imposing these kinds of requirements is counterproductive to the goal that the disclosures should be clear and easy to understand.