Automated Decision-Making Transparency Obligation (APP 1) Issues Paper Submission

Your views and submissions

Your views and submissions on the following areas will assist us with developing guidance on the ADM obligation. Questions and **fictional** Edge Cases are provided to guide your responses.

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

Question 1

Substantially and directly related to making a decision

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.	- Degree of reliance on the ADM system output 1. Strongly disagree - Ability and likelihood of human override over an ADM decision 1. Strongly disagree - Nature of the output (advisory vs determinative) 1. Strongly disagree - Transparency and explainability of outputs 2. Disagree - Integration of ADM into decision making workflow 1. Strongly disagree
Free text comments	I am fundamentally against any kind of abrogation of responsibility to a machine which cannot be held responsible for harms caused by decisions. All decisions, made by a person, should be transparent and explainable in the first place. It should never be any kind of gamble to ask for help from government authorities or in the provision of goods or service.

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Question 2

Substantially and directly related to making a decision

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.

Would you consider NACIA's described uses of GPTea to be substantially and directly related to making decisions? **(Please provide yes/no)**	Yes.
Can you provide your reasons for your response?	Delegating to an unaccountable machine, which only acts on data it was trained on, likely through mass copyright theft, and can be manipulated to provide an inequitable outcome based on unfair prompt settings on an organisational level. It will be easier for staff to accept advice rather than engage with it themselves.

Question 3

Meaning of significantly affect rights or interests

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 the examples using the above mentioned (1-5) ranking system and include any additional examples.	- Sensitive information 5. Strongly agree - Vulnerable persons 5. Strongly agree - Intrusive practices 5. Strongly agree - Financial outcomes 5. Strongly agree
Free text comments	We're talking about systems that only apply to vulnerable people, their rights and financial outcomes, with a potential to be intrusive against their dignity, past, present and future. Abled people, often carers of these vulnerable people will be forced out of paid work to care for them if these systems fail anywhere.

Question 4

Meaning of significantly affect rights or interests

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?

Can you provide your reasons for your response?	Everyone engaging with these systems where automated decision making is proposed to be used. Aged care, disability care and welfare. You are not proposing a tax system, for example, based on someone's functional capacity, let alone their rights to exist and participate in society. This is why robodebt caused so much harm, by only applying to people who were vulnerable entirely based on whether they accessed a low welfare payment.

Question 5

Meaning of significantly affect rights or interests

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?[1] 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 the services/support using the above mentioned (1-5) ranking system and include any additional examples.	These all rank 5. Entirely agree
Free text comments	All of these are required for a dignified individual existence. I fundamentally disagree with carving up rights and dignity for cost savings. If an application needs help to access any of these, they should get it.

[1] For example, paragraph 343 of the Explanatory Memorandum states that this may include access to healthcare services.

Question 6

Meaning of significantly affect rights or interests

Are there any other legal frameworks or policies that the OAIC should have regard to in considering the meaning of 'rights' and 'interest'?

Free text comments	The United Nations Declaration of Human Rights and United Nations Convention on the Rights of the Child, in absence of any legislated or constitutional bill of rights.

Question 7

Meaning of significantly affect rights or interests

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 when his book-club buddy, Charles, from a country town, paid only $35.

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.

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?**	Yes. His dignity to be charged a fair and reasonable price for a common good or service was violated by his location alone. Daintree attempted to price gouge him for it, making it inaccessible to him, and signalling that his presence is unwanted and unwelcome in the area, effectively pricing him out of service.
If yes, at what amount would differential pricing be considered to have significantly affected the interests of an individual? **5% price difference, 20% price difference, or other (please specify amount)**	Any difference. If Australia Post, for example, charges the same flat rate no matter the destination in the state or country. There is no acceptable price difference, all else being equal.

In judging whether differential pricing significantly affects rights or interests, how important would you consider the following factors on a scale from 1 to 5 (with 1 being not important and 5 being very important):	
The dollar amount of differential pricing	1
The significance of the product or service being purchased	1

Question 8

Meaning of making a decision

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.

Should it be considered a 'decision' that Rafqa did not receive the Manscon job ad? **Please provide a Yes/No response**	Yes.
Can you provide your reasons for your response?	It was an active decision to discriminate based on an inborn or acquired trait, being sex or gender. There was absolutely no need to add that as criteria for candidates, whether for an advertisement, or active discrimination in hiring practices had Rafqa applied despite the advertisement's target settings, as part of an internship or graduate application to potential employers. It does not matter if it wasn't intentional because the negative outcome is the same as if it was, that Raqfa missed an opportunity she was qualified for and entitled to apply for.

Question 9

Meaning of 'arranged for'

Are there any scenarios relevant to the meaning of 'arranged for' that you consider require guidance? If so, why?

Can you provide your reasons for your response?	An average AI data system is trained on the mass theft of copyrighted works, as well as the sum of all out of copyright or permissively licenced work. Due to the patriarchal, white, cisheteronormative organisation of society for most of recorded modern history, the models are biased towards certain outcomes unless the accumulated data is appropriately weighted, an impossible task given the amount of data scraped and used to build these models. Is it ethical to give a fundamentally flawed and legally compromised automated process any decision making power at all, when it can never be held responsible for its outcomes?

Question 10

Extent of disclosure

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?	There must be a method provided to avoid any interaction with computerised automated decision making systems where they interact with any kind of large language model, built on mass theft, that is also trained on data supplied to it in its normal function with potential risks to privacy and dignity. If/then/else flow charts are acceptable where they do not demand specific actions to be taken in order to receive support or service, or do not infringe upon the dignity of the person in question. For example, Services Australia's demand for disabilities to be diagnosed and stabilised infringes on disabled people's dignity while they seek support from a healthcare system where specialists may be out of reach to someone on a low welfare payment. It's unacceptable that they be exploited by conditions of the lower JobSeeker payment, for example, as someone unable to exist in society, pay rent or board, bills, and buy groceries, while disabled by undiagnosed and untreated conditions. This is unacceptable