Insurance Council of Australia

Australian Information Commissioner
GPO Box 5288
Sydney NSW 2001

*Via email: privacyreformtranche1@oaic.gov.au*

Dear Commissioner,

## Automated Decision-Making Transparency Obligation (APP 1)

The Insurance Council welcomes the opportunity to provide comment on the issues paper: *Automated Decision-Making Transparency Obligation (APP 1).*[1]

The Insurance Council is the representative body of the general insurance industry in Australia. Our members represent approximately 90 percent of total premium income written by private sector general insurers. The Insurance Council and its members support the intent of increased transparency around the use of Automated Decision Making (ADM). We appreciate the importance of consumers gaining more control over their personal information and understand the importance of transparency in securing trust between entities and consumers over the handling of their personal information. These objectives are consistent with the foundations of Australia's Privacy Framework.

The Insurance Council understands that the feedback collected via this process will inform the Office of the Australian Information Commissioner (OAIC) guidelines on implementing ADM requirements enacted in the *Privacy Act 1988* in 2024. Although the OAIC's guidelines are not prescribed regulation, they are used to interpret legislative requirements and therefore inform enforcement. The Insurance Council would like to see the ADM guidance deliver practical outcomes that are of genuine benefit to individuals. We offer the following considerations, which will help ensure the guidelines are clear, avoid conflicting regulatory objectives and support effective compliance.

**ADM disclosures in Privacy Policies should be succinct and accessible**

General insurers are required by financial services regulation to disclose complex legal information to their customers at various stages throughout the policy cycle. For example, in addition to existing privacy policies, other disclosures include (where applicable):

- Product Disclosure Statements;
- Key Facts Sheets;
- Cash Settlement Fact Sheets;
- Certificates of Currency;
- Direct Debit Request Services Agreements.

The existing Australian Privacy Principles (APP) acknowledge the importance of *clearly expressed (privacy) policies.*[2] Disclosure documents that are excessively detailed do not lead to better consumer understanding. In fact, they cause cognitive overload and reduce a consumer's ability to meaningfully engage with the information provided. The latest Australian Community Attitudes to Privacy Survey 2026

[1] Office of the Australian Information Commissioner.(2206). *Automated decision-making transparency obligation (APP 1).* https://www.oaic.gov.au/__data/assets/pdf_file/0027/263925/ADM-Issues-Paper.pdf
[2] Office of the Australian Information Commissioner.(2025). *Chapter 1: APP 1 — Open and transparent management of personal information.* https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-guidelines/chapter-1-app-1-open-and-transparent-management-of-personal-information

indicates that a significant proportion of Australians (69%) report that they always or often agree to a company's privacy policy without reading most of it in the past 12 months.[3] This finding underscores the challenge for all entities in delivering privacy policies that are effective in communicating with consumers.

The discussion paper references the *Trust Framework for Government Use of AI and ADM* and suggests an individual should be across *ADM rules, the evidence used and how it led to a decision*. This level of detail is above and beyond disclosures currently used in privacy policies and what was originally described in the Privacy Act Review report (see recommendations 19.1 and 19.2)[4]. It is also beyond what is outlined in APP 1.8, which is contained to the types of information and decisions where ADM is used and does not extend to *how* decisions are made.[5] ADM software can be used across the entire insurance policy cycle from policy inception, through to claims management, fraud investigations and dispute management. Outlining every conceivable use of ADM would add considerable length to privacy policies. This would work against the OAIC's own accessibility objectives, including those currently being pursued under the new Children's Code. For this reason, the guidelines should balance clarity and succinctness with additional detail. We submit that ADM disclosures in privacy policies should only be required to generally reference the *kinds of information used* and the *kinds of decisions* made, enabling entities to leverage existing disclosure processes where appropriate and to mitigate risks of disengagement and cognitive overload by individuals.

**Scope of Computer Programs**

The guidance should not require organisations to disclose specific computer programs or technical systems by name. We note that the issues paper and the Addendum to the Explanatory Memorandum[6] state that such disclosures are not expected to include commercial-in-confidence information. This needs to be made explicit in the guidance. In practice, many automated decisions are supported by multiple programs or processes operating in combination. Requiring disclosure of individual systems would go beyond what the legislation requires. In addition, entities can change some programs/systems on a semi-regular basis to achieve increased efficiencies and/or improve customer and business outcomes. If updates to privacy policies were required to reflect changes in ADM software this would cause significant administrative burden, not just on insurers but also on consumers where they must be notified of such updates.

A purpose-based approach to describe if a computer program may be used for specific purposes would be more effective in helping consumers to understand how they might be impacted. For example, describing a process as supporting "insurance claims assessment decisions" rather than naming individual technical systems.

Guidance should also avoid prescribing specific numerical thresholds or percentage-based rules (as outlined in Question 7 of the issues paper survey), which are inflexible and difficult to apply consistently across organisations with different operational models. Principles-based guidance, aligned with the spirit of the Australian Privacy Principles, is an appropriate approach.

**The Scope of 'Substantial' and 'Directly Related To'**

The guidance should not introduce concepts that go beyond the intent of the original Explanatory Memorandum. The threshold for ADM being in scope has been defined by the legislation with the terms

[3] Office of the Australian Information Commissioner.(2026). *Australian Community Attitudes to Privacy Survey 2026*. https://www.oaic.gov.au/__data/assets/pdf_file/0023/264362/ACAPS-2026-Report.PDF
[4] Attorney-General's Department.(2023). *Privacy Act review report*. Australian Government. https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report
[5] Office of the Australian Information Commissioner.(2025). *Chapter 1: APP 1 Open and transparent management of personal information*. https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-guidelines/chapter-1-app-1-open-and-transparent-management-of-personal-information
[6] Addendum to Explanatory Memorandum. *Privacy and Other Legislation Amendment Bill 2024*. (Cwth)

‘substantial’ and ‘directly related to’.[7] The scope of these terms should be targeted, picking up instances where there is a direct connection between the decision and the action/task that is done by the computer program, and where this decision is a principal factor in the decision-making process. Outputs that are purely informative or advisory, and where the outputs are overseen or reviewed, and finalised by a human, should be excluded. Additionally, these thresholds should be directly related to the legislative scope of *impacting the rights or interests of an individual*.

**The Scope of ‘Arranged For’**

Insurers deal with complex supply chains to ensure the efficient operations of insurance claims handling. This includes sourcing locally available repairs for vehicles and properties and supporting rehabilitation for personal injuries. General insurers partner with thousands of businesses across Australia, including many small businesses. Accordingly, insurers stress the importance of carefully calibrated guidance for the term ‘arranged for’ given the context of the complexity of our supply chains.

General insurers would like to see the term ‘arranged for’ be clearly distinct from existing terms applied in privacy law, such as ‘holds’. Given the wide interpretation of the term ‘holds’, the term ‘arranged for’ should reflect the targeted circumstances this term is trying to regulate. It is our view that the ordinary meaning of ‘arranged for’ should be preserved and capture only an intentional or active choice by an insurer to engage a third-party for ADM services. The term should not capture instances where insurers are held to having ‘arranged for’ ADM operated by third parties that insurers did not authorise, request or solicit as the primary service. For example, if an insurer enters into an agreement with a vehicle repairer, the primary service on offer is vehicle repairs. If that repairer uses ADM triage and prioritise repairs based on their own criteria, this should not be classed as an insurer *arranging for* ADM.

**Helpful examples to include in the guidance**

The ADM issues paper draws heavily on employment-related examples. While these are useful, guidance should illustrate examples across different contexts that can be applied across industries. For example, outlining how ADM that is used to improve productivity and efficiency for day-to-day tasks, such as summarisation tools or research engines, would be captured (if at all).

One fictional edge case in the issues paper highlights an example where ADM is used for differential pricing. The *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026* is currently being considered by the Australian Parliament. This Bill seeks to regulate differential pricing practices. To avoid generating duplicative regulatory frameworks that both seek to regulate differential pricing via separate instruments, this example should be removed. The example should focus on transparency over personal data usage, rather than pricing practices.

The Insurance Council also notes that the discussion paper and the supporting survey entertains concepts from the Privacy Act Review report that have not been passed by the Australian Parliament. For example, recommendations regarding increased access to and explanation of how personal information is used (see recommendation 18.1)[8] and the removal of the employee records exemption have not been enacted in legislation but are outlined as key concepts in the issues paper and examples. Conflating the ADM expectations with potential future changes creates significant operational uncertainty for businesses. The OAIC should focus on delivering guidance that delivers the intent of the ADM recommendations and the existing legislative framework and avoid pre-empting future regulatory changes that may be enacted as part of tranche two Privacy Act reforms.

**Guidance is required as soon as possible**

[7] Privacy Act 1988 (Cth). https://www.legislation.gov.au/C2004A03712/2014-03-12
[8] Attorney-General's Department.(2023). *Privacy Act Review Report*. Australian Government. https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report

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Many general insurers in our membership have been preparing for the ADM disclosure requirements ahead of the 10 December 2026 compliance date. However, the delay in publishing final guidance and the lack of clarity around scope and application, has caused some to pause implementation activity, creating uncertainty. The final guidance should be published by late July 2026 to allow time for entities to assess their current position, identify any gaps, and implement required changes, especially where consultation is required across multiple entities. The later that guidance is published, the greater the risk that organisations will need to re-do or revisit work already completed. This is inefficient and increases compliance costs, costs that ultimately flow through to consumers via insurance premiums.

Alternatively, the OAIC should signal an extended transitionary period before any enforcement activity commences, in the event of late publication of the guidance to provide time for entities to align with regulatory intent.

If you would like to discuss the issues outlined in this submission, please contact [redacted], Senior Adviser Strategic Policy at [redacted].

Yours sincerely

[redacted]

Chief Operating Officer and Deputy CEO