Office of the Information Commissioner
Western Australia

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OIC WA Submission on the OAIC's Automated Decision-Making Transparency Obligation (APP 1) Issues Paper

The Office of the Information Commissioner Western Australia (OIC WA) welcomes the opportunity to provide its views on the OAIC's Issues Paper 'Automated Decision-Making Transparency Obligation (APP 1) (**Issues Paper**).

Information Privacy Principle (IPP) 10 in the *Privacy and Responsible Information Sharing Act 2024* (WA) (**PRIS Act**) is the first law in Australia to regulate the handling of personal information in the context of automated decision-making (**ADM**). It comes into effect on 1 July 2026. Many of the points the Issues Paper raises are relevant to the OIC WA's development of ADM guidance. In making this submission, we outline where, in our view, there are similarities between the ADM requirements in the PRIS Act and the forthcoming ADM transparency obligation in the *Privacy Act 1988* (Cth). We consider there are benefits, both to regulated entities and members of the public, in a consistent interpretation of the requirements where possible and appropriate.

Information about the OIC WA

The OIC WA is the independent regulator for the privacy provisions of the PRIS Act and the *Freedom of Information Act 1992* (WA). The OIC WA is independent of the Executive government. The Information Commissioner and her deputies report to the Western Australian Parliament.

Under the PRIS Act, the functions of the OIC WA include promoting the objects of the PRIS Act and an understanding of matters relating to the IPPs. The objects of the PRIS Act include promoting responsible and transparent practices for handling personal information by IPP entities. The administrative provisions of the PRIS Act commenced on 1 July 2025, and most of the substantive privacy provisions of the PRIS Act including the IPPs commence on 1 July 2026.

Automated decision-making and the PRIS Act

IPP 10 in the PRIS Act introduces new requirements in relation to the Western Australian public sector and their contracted service providers' use of ADM.

IPP 10 requires an IPP entity employing an ADM process involving the use of personal information in making a significant decision about an individual to:

1. **Conduct an assessment** that considers:
    - how to eliminate or minimise the risk of harm, bias and discrimination,
    - the process for human intervention in the decision, and
    - whether privacy requirements are met.
2. **Evaluate** periodically the operation and effectiveness of the ADM and update the assessment when changes are made.
3. **Be transparent** about the use of ADM, including notifying an individual where ADM was used to make a decision about them.

Please see the OIC WA's information sheet on Privacy & accountability in automated decision-making.

IPP 5.3(d) also requires an IPP entity, upon request, to take reasonable steps to let a person know whether any personal information the IPP entity holds is used for an ADM process. Importantly, this is not limited to the use of ADM in making significant decisions about individuals.

Meaning of 'substantially and directly related' and 'materially assisted'

The PRIS Act defines an ADM process to include where a decision is 'materially assisted' by an automated system (see s16 PRIS Act). The concept of materially assisted is further broken into a two-part test:

1. the decision is made in reliance on a preliminary decision-making step made by an automated system; and
2. the preliminary step has a material bearing on the decision that is made.

There are similarities between this test and the meaning of 'substantially and directly related' as outlined in the Explanatory Memorandum to the *Privacy and Other Legislation Amendment Act 2024* (Cth). In our view, both tests are designed to assess the degree of human involvement in the decision-making process. This must take account of a range of factors including the authority and skills of the decision maker, resourcing (including time available to make the decision), explainability of outputs and the decision makers ability to challenge the output of the automated system.

Accordingly, in answer to questions 2 and 3 in the Issues Paper, it is difficult to assess the fictional edge case without information enabling an assessment to be made of the degree of human involvement.

Meaning of 'significantly affect the rights and interests' and 'significant decision'

IPP 10 applies where an IPP entity employs an ADM process using personal information to make a 'significant decision' about an individual.

Significant decision is defined in s16(4) of the PRIS Act as a decision:

- affecting an individual's rights, entitlements, interests or liabilities; or
- otherwise having a significant effect on an individual's life circumstances, opportunities, behaviour or wellbeing.

This definition captures a similar but potentially broader range of decisions than APP 1.7, which only refers to decisions that 'significantly affect the rights and interests of an individual'.

When considering what other types of decisions are included in the definition of 'significant decision', it is important to remember the PRIS Act regulates public sector entities and their

contracted service providers, meaning IPP 10 is primarily concerned with administrative decision-making.

Consideration needs to be given to the nature of public sector services, which include services targeted at vulnerable groups or those in vulnerable situations. Additionally, recipients of public services often have limited alternative service options available, increasing the likelihood that decisions limiting access to these services will have a significant impact on individuals. Accordingly, the OIC WA considers decisions impacting the accessibility of public services are also likely to be significant within the meaning of IPP 10.

Meaning of making a 'decision'

Like APPs 1.7-1.9, IPP 10 is concerned with the use of ADM in decision-making.

The OIC WA recognises there are different levels of decision-making and that a decision-making process may include a series of intermediate decisions before a final decision is made.

Both the concept of 'materially assisted' in the PRIS Act and the concept of 'substantially and directly related' in the Privacy Act contemplate there may be preliminary steps in a decision-making process where ADM is used. In this way, both the PRIS Act and APP 1.7 have flexibility to deal with intermediate decisions forming part of a larger decision-making process.

Applying this to the Fictional Edge case example in question 10, the use of an automated process to determine to whom to promote the job advertisement can also be viewed as a preliminary step in a broader decision of who to employ.

Meaning 'arranged for' and 'employs'

IPP 10 applies to an IPP entity that 'employs' an ADM process. This can include a contracted service provider.

We agree with the OAIC's statement that entities "should actively identify, assess and keep oversight of how [their] third-party product/service uses ADM". The OIC WA has recently published guidance on How PRIS applies to Contracted Service Providers, which includes consideration of the responsibilities of outsourcing entities to conduct appropriate due diligence when engaging third-party service providers.

Conclusion

In making this submission, the OIC WA highlights the broad ADM obligations in the PRIS Act, which extend beyond the requirements of the Privacy Act. The OIC WA has also sought to identify similarities in terminology with the forthcoming ADM transparency obligation in the Privacy Act, where they exist. The OIC WA supports a consistent interpretation where possible and appropriate, however, we also acknowledge the application of ADM in public and private contexts may raise different issues. The OIC WA expects to issue guidelines on the operation of IPP 10 and IPP 5.3, specifically in relation to the meaning of 'materially assisted' and 'significant decision' in the future.

Yours sincerely

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