Australian Government

Services Australia

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

Introduction

Services Australia (the agency) welcomes the OAIC's consultation on guidance for the Automated Decision Making (ADM) transparency obligation under APP 1, which commences on 10 December 2026.

Australians entrust the agency with their personal information to efficiently deliver high-quality, accessible government services and payments. For many years, the agency has used computer systems that rely on business rules to process this information, to automatically determine customers' entitlements, make payments and send letters.

ADM is an important capability for the agency due to the volume and complexity of services. ADM can provide substantial improvements through reduced wait times for customers, deliver predictable and consistent decision-making, and productivity efficiencies for staff.

Public trust in the agency's service delivery is essential for it to remain effective and efficient. The agency is committed to openness and transparency in how ADM is used as outlined in the agency's Automation and AI Strategy 2025-27. The agency publishes considerable information about the use of ADM to support the delivery of government services, through Privacy Collection Notices, an Automation and AI Transparency Statement, and other publicly available information on the agency's website. These practices were acknowledged by the OAIC in its report 'Automated decision-making and public reporting under the Freedom of Information Act' published in January 2026. The agency regularly reviews its approach to ADM to identify new opportunities to further uplift its practices. The agency is also aware that the timeliness and consistency of decision-making contribute to public trust and confidence.

This submission responds to the OAIC's numbered questions in the ADM Issues Paper submission questions. It also provides some further comments and observations.

In developing guidance for the ADM transparency obligation, Services Australia encourages the OAIC to ensure that key term definitions and guidance considers the broad range of personal circumstances faced by customers and the broad range of payments and services delivered by the agency.

It is critically important that guidance on the transparency obligation is consistent and clear, and that the guidance accounts for the unique challenges and opportunities presented by ADM for government agencies, including Services Australia.

The agency looks forward to continuing to work with the OAIC to ensure that Australians can have confidence in the agency's approach to ADM and the management of personal information as part of these processes.

Responses to consultation questions

Question 1 – Substantially and directly related to making a decision (ranking factors 1–5)

Services Australia considers that the following factors are most relevant when assessing whether a computer program substantially facilitates and is directly connected to a human decision-maker's decision. This aligns with the Issues Paper's framing of "substantially" (key factor in facilitating) and "directly" (direct connection).

We rank the suggested factors as follows (on the 1–5 scale: 1 = strongly disagree that this is relevant; 5 = strongly agree that this is relevant):

- Degree of reliance on the ADM system output – 5 (Strongly Agree);
- Integration of ADM into the decision-making workflow – 5 (Strongly Agree);
- Ability and likelihood of human override over an ADM decision – 5 (Strongly Agree);
- Nature of the output (advisory v determinative) – 4 (Agree);
- Transparency/explainability available to the decision-maker (what the tool did and why) – 4 (Agree).

Additional factors we suggest the guidance addresses:

- Organisational policies and instructions: whether the entity's own procedures require or encourage decision-makers to follow the ADM output, or treat it as a default;
- Capacity of the human decision-maker: where decision-makers lack the time, information or technical capacity to meaningfully assess the underlying data independently, the ADM output is more likely to be 'substantially' related;
- Volume of decisions: where ADM processes large volumes of decisions with limited individual human review time per case, this increases the likelihood that the ADM is a key factor;
- Significance of the program's contribution (whether the output changes the outcome compared to a baseline process);
- Automation bias risk controls (e.g. mandatory verification, second-person review, audit trails), noting the agency's internal practice of human oversight of ADM processes.

Question 2 – Substantially and directly related to making a decision.
Fictional case: Generative AI with human oversight

Response: Yes.

NACIA's use of GPTea is, in our view, substantially and directly related to making eligibility decisions for the following reasons:

- The chatbot's outputs (summaries and recommendations) are directly connected to the eligibility decision. The decision-maker receives, and is influenced by, the AI's characterisation of the candidate's profile and eligibility;

- The fact that NACIA staff "always have oversight and make the final decision" does not of itself break the substantial relationship. The guidance should highlight that nominal human oversight does not exclude the ADM from scope. Rather, the consideration is whether the AI output is a key factor in the human's deliberation, and in this scenario, it is;
- Aged-care eligibility decisions have the potential to significantly affect the rights and interests of vulnerable individuals;
- The Issues Paper indicates that a computer program can be captured as substantially and directly related to making a decision where it is used to recommend or guide a human decision-maker and is a key factor in facilitating the decision. In the edge case, the GenAI tool is providing summaries and recommendations used in eligibility decisions for life-changing support, which is likely to be a substantial facilitator even with human oversight.

From an implementation perspective, guidance would benefit from clarifying how to assess "substantial" where:

- the tool influences attention, prioritisation or framing (e.g., what facts are highlighted); and
- the human decision-maker is required to review but may not independently re-establish all inputs.

Question 3 – Meaning of significantly affects rights or interests

The Issues Paper frames "rights or interests" broadly and includes decisions affecting access to significant services or support.

We rank the suggested factors as follows (on the 1–5 scale: 1 = strongly disagree that this is relevant; 5 = strongly agree that this is relevant):

- Sensitive information (as defined in the Privacy Act) — 5 (Strongly agree). Where the decision is based on, or results in disclosure of, sensitive information, the potential for significant impact is elevated;
- Vulnerable persons — 5 (Strongly agree). Children, elderly persons, persons with disability, persons experiencing financial hardship, persons from culturally and linguistically diverse backgrounds, and First Nations peoples are more likely to be adversely or beneficially impacted by a decision;
- Intrusive practices — 5 (Strongly Agree). Decisions such as those based on profiling or inferred characteristics raise heightened concerns;
- Financial outcomes — 5 (Strongly agree). Decisions that affect access to services, including health and social services have obvious potential to significantly affect an individual's interests.

Additional factors we suggest the guidance addresses:

- Irreversibility: decisions that are difficult or impossible to reverse need particular attention;
- Cumulative or systemic impact: decisions that form part of a pattern of ADM that collectively disadvantages a group;

- Transparency of the underlying model: where the basis for the decision cannot be explained to the individual, the risk of significant impact is harder to identify and mitigate;
- Power imbalance: decisions made in contexts where the individual has limited ability to seek alternative providers or challenge outcomes, such as social security benefit decisions;
- Review rights and information pathways: individuals should have access to clear information about automated decisions and appropriate review and appeal mechanisms, supporting transparency, accountability and procedural fairness;
- Practical consequence severity and duration (e.g. denial of access, delay, stigma, safety impacts), noting the Issues Paper's emphasis on decisions that affect access to significant supports.

Question 4 – Meaning of significantly affects rights or interests
Classes of persons vulnerable for the purposes of considering a decision's expected effect on a person's rights or interests.

The Issues Paper notes that vulnerability is relevant where the same decision may have a greater impact on some individuals.

We suggest the guidance treat vulnerability as contextual, and include the following classes of persons as requiring consideration (non-exhaustive):

- People experiencing family and domestic violence or safety risks;
- People with disability;
- Children and young people;
- People experiencing homelessness or housing insecurity;
- People with low digital literacy or limited access to services;
- People in acute financial hardship;
- Elderly people;
- Cognitive impairment;
- People experiencing mental illness or psychological distress;
- First Nations people;
- People from culturally or linguistically diverse backgrounds;
- Asylum seekers and people without secure visa status.

Consistent with the Issues Paper's approach to impact assessment, these cohorts may experience amplified consequences from errors, delays, or adverse outcomes.

We suggest the guidance make clear that the list of vulnerable classes is non-exhaustive, and that vulnerability may be situational (e.g. a person who is ordinarily not vulnerable may be in a vulnerable position when seeking emergency financial assistance).

Question 5 – Meaning of significantly affects rights or interests
What is a "significant service or support"

We rank the suggested factors as follows (on the 1–5 scale: 1 = strongly disagree that this is relevant; 5 = strongly agree that this is relevant):

- Financial assistance – 5 (Strongly Agree);
- Access to essential utilities – 5 (Strongly Agree);
- Access to banking and credit services – 5 (Strongly Agree);
- Access to telecommunications (where required for access to essential services) – 5 (Strongly Agree);
- Access to educational services – 5 (Strongly Agree);
- 'In home services' – 4–5 (Agree – Strongly Agree) depending on dependency and safety context;
- Physical assistance/support – 4–5 (Agree – Strongly Agree) depending on dependency and safety context.

Additional categories we suggest the guidance consider:

- Access to housing and accommodation — including social housing, rental assessments, and mortgage approvals;
- Access to insurance — including health, life, disability and home insurance;
- Employment decisions — including hiring, promotion, performance assessment and termination;
- Access to justice services — including Legal Aid eligibility.

Question 6 – Meaning of significantly affect
Other legal frameworks or policies the OAIC should have regard to in considering the meaning of 'rights' or 'interests'

The Issues Paper highlights synergy with administrative law and freedom of information (FOI) and Information Publication Scheme (IPS) requirements.

We suggest the guidance should also recognise alignment with, or have regard to, the following frameworks:

- Agency transparency expectations embedded in whole-of-government practice, particularly:
    - IPS-related transparency;
    - the relationship between ADM transparency and *Freedom of Information Act 1982* proactive publication;
    - Automated Decision-Making Reform (noting recent Attorney General's Department public consultation following the Royal Commission into the Robodebt Scheme recommendation to consider reforms to introduce a

consistent framework to ensure that ADM is used fairly and transparently in government services); and

- ‘Policy for the responsible use of AI in government’ transparency requirements (e.g. publication of an AI Transparency Statement).

- The *Australian Human Rights Commission Act 1986* and associated anti-discrimination legislation, which define protected attributes and prohibited grounds of discrimination, many of which may be engaged by ADM;
- The *Racial Discrimination Act 1975* and *Sex Discrimination Act 1984*, which are relevant where ADM may produce discriminatory outcomes based on protected attributes;
- The United Nations Convention on the Rights of the Child, which informs the meaning of children's rights, which may be affected by ADM;
- The United Nations Convention on the Rights of Persons with Disabilities, which articulates the rights of persons with disability in the context of access to services and may be affected by ADM;
- The *National Disability Insurance Scheme Act 2013* — which provides a framework for rights and interests in the disability support context;
- The Consumer Data Right framework, which articulates data-related rights relevant to ADM in financial services;
- The *Social Security Act 1991* and *Social Security (Administration) Act 1999*, which provide for the payment of social security benefits and allowances to eligible individuals;
- The *Health Insurance Act 1973* and *National Health Act 1953*, which provide a framework for medical and pharmaceutical benefits in Australia;
- The *Child Support (Assessment) Act 1989* and *Child Support (Registration and Collection) Act 1988*, which provide a framework for ensuring children receive appropriate financial support from their parents following separation.

Where the guidance relies on other frameworks, guidance would be strengthened by clearly describing how entities should manage overlap and avoid duplication, for example between privacy policy transparency and other public transparency artefacts.

This is particularly important where multiple transparency mechanisms (such as IPS, Privacy Act and ADM-related disclosures) intersect, as duplication or inconsistent definitions may reduce clarity for the public and undermine the effectiveness of transparency measures.

The agency notes that broader work is underway across Government, including legislative reform being led by the Attorney-General’s Department. To support consistency and reduce the risk of duplication or divergence, guidance would benefit from close alignment with these reforms as they are finalised.

Question 7 – Meaning of significantly affect rights or interests
Fictional Edge Case: Differential pricing

Response:

Yes, we consider that Marco's interests have been significantly affected.

It depends on the significance of the product/service and whether differential pricing effectively restricts access in a way that could be expected to significantly affect an individual's interests. This is consistent with the Issues Paper's focus on the significance of the goods/services and real impacts on access and circumstances.

A fixed percentage threshold may be difficult to apply across contexts. Guidance may be more workable if it emphasises effect on access (e.g. whether the pricing makes a significant good/service effectively inaccessible) rather than a universal percentage.

We rank the provided factors as follows (on the 1–5 scale: 1 = not important; 5 = very important):

- The dollar amount of differential pricing – 4 (Agree this is important);
- The significance of the product or service being purchased – 5 (Strongly agree this is important).

Additional factors we suggest the guidance address:

- Whether the differential pricing is based on a vulnerability attribute;
- Whether the individual was aware that pricing was being personalised;
- Whether the differential creates a barrier to access (i.e. the price is prohibitively high for the individual, not merely higher than for others).

Question 8 – Meaning of making a decision
Fictional Edge Case: Discriminatory targeted job ad

Response:

Yes, it should be considered a 'decision' that Rafqa did not receive the job ad.

The Issues Paper frames decisions broadly and recognises that decisions can affect rights or interests whether adverse or beneficial and includes impacts such as limiting access to employment opportunities through targeted systems.

We suggest the guidance make clear that ADM operates by filtering, ranking, allocating or directing content to individuals — rather than making an express decision — is captured where the filtering has the effect of significantly affecting the individual's access to an opportunity.

Question 9 – Meaning of "arranged for"
Scenarios relevant to the meaning of 'arranged for'

The Issues Paper notes that "arranged for" captures where one entity is responsible for arranging use of a program even if operated by another entity, and highlights procurement and third-party products/services.

Guidance would be particularly helpful for:

- Shared platforms and "embedded" functionality (e.g. where a platform provider offers automated triage/recommendation features that the entity configures and deploys);
- Supplier-managed systems where the supplier updates models/rules over time (ongoing oversight expectations);
- Employee-directed tool use (where the entity "permits or directs" staff to use tools to generate material that substantially informs decisions), noting the Issues Paper's example of using AI tools to draft performance assessments.

Question 10 – Extent of disclosure
Additional matters that entities should disclose

The Issues Paper stresses the need to balance meaningful transparency with avoiding excessive detail that obscures understanding.

We suggest the OAIC guidance would be most practical if it:

- Provides plain-language templates for describing "kinds of personal information" and "kinds of decisions", grouped by decision domain;
- Includes worked examples distinguishing:
    - full automation (decision made solely by program); and
    - decision support (program does a thing substantially and directly related), including Generative AI summarisation/recommendation use cases;
- Clarifies how entities can describe ADM at an appropriate level without disclosing security-sensitive details, consistent with the Issues Paper's recognition that disclosures should not overwhelm and may need to balance other risks;
- Recommends including a public contact point for enquiries about ADM disclosures, consistent with agencies' broader transparency expectations.

Additional comments

We suggest that the guidance defines key terms and provides examples to assist entities, particularly for the following terms:

- Computer program – the Issues Paper states that the term is intended to take its ordinary meaning and encompasses AI and machine learning. We support the technology-neutral approach, but it may be open to interpretation, e.g. whether a spreadsheet formula is included;
- Arranged for – the Issues Paper provides helpful illustrative examples. We suggest these be included in the guidance along with a formal definition;
- When ADM is 'adverse' – for instance, if a payment is cancelled this seems adverse, but if the cancellation prevented an overpayment, this is actually beneficial;
- Substantially and directly related to – the Issues Paper reproduces the Explanatory Memorandum definition, and we suggest would be assisted by further guidance on how to assess whether it is met in practice;

- Decision – the Issues Paper's survey of other frameworks (the *Administrative Review Tribunal Act 2024*, the *Administrative Decisions (Judicial Review) Act 1977*, the *Corporations Act 2001* and the European Union *General Data Protection Regulation*) is useful, but we suggest a single definition or further interpretive guidance would assist, including in relation to matters such as whether a decision includes preparatory or intermediary steps, whether it includes omissions or inaction and whether it must produce an outcome of legal effect;
- Reasonably be expected to – guidance on this phrase may assist with certainty, particularly in relation to the legal meaning of the phrase and how entities can apply it to position, e.g. whether it is an objective test from the perspective of the reasonable observer, not the entity;
- Significantly affect – the Issues Paper provide examples and factors. We suggest these be included in the guidance along with a formal definition;
- Rights or interests – this phrase determines the breadth of the kinds of decisions captured. The guidance may benefit from confirming whether 'rights' extends beyond legal rights;
- Used in the operation of – the guidance may benefit from addressing this phrase, e.g. whether it includes training an ADM model, whether it includes information generated by the computer program, and the relevance if the entity does not know what information is being used in the ADM such as processing by a third-party AI model without revealing the data used.

We observe that ADM is addressed in other regulatory frameworks that apply to agencies, including FOI and IPS and may be addressed elsewhere such as in an agency's transparency statement in response to the Digital Transformation Agency's *Policy for the responsible use of AI in government*, as is the case with Services Australia. There may be additional intersecting or overlapping frameworks. We suggest that the guidance takes these into account and that definitions remain consistent across frameworks.