Automated Decision-Making Transparency Obligation

Issues Paper Submission

Summary

We welcome the opportunity to provide feedback on the Office of the Australian Information Commissioner's (OAIC) proposed guidance regarding the new Automated Decision-Making (ADM) transparency obligations under APP 1.7- 1.9 of the *Privacy Act 1988* (Cth).

We support the policy objective of improving transparency, accountability and public trust in the use of ADM systems, particularly where personal information is used in decisions that may significantly affect an individual's rights or interests.

Effective guidance should adopt a principles-based and risk-proportionate approach that focuses on the real-world impact of ADM on individuals, rather than the technical characteristics of the underlying technology.

In our view, the concepts of "substantially and directly related", "significantly affects rights or interests", and "arranged for" should be interpreted consistently with established principles of materiality, causation, procedural fairness and discrimination risk. The guidance should prioritise high-impact decision-making contexts, recognise the practical influence of AI-assisted systems even where human oversight exists, and provide clarity regarding third-party and vendor-operated technologies.

A balanced, risk-based framework will enhance transparency and consumer confidence while ensuring the obligations remain practical, proportionate and sustainable for regulated entities.

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	
Please rank the factors using the above mentioned (1-5) ranking system and include any additional factors.	We consider that the concepts of "substantially" and "directly" should be assessed holistically, having regard to multiple risk-based factors that collectively indicate the degree of influence a system has on the decision-making outcome. Ranking (1–5 importance) ▪ Degree of reliance on ADM output (5) ▪ Nature of output (determinative vs advisory) (5) ▪ Ability and likelihood of human override (5) ▪ Integration into workflow (4) ▪ - Transparency and explainability (3)
Free text comments	**Additional factor:** ▪ Material impact on final outcome (5) ▪ Vulnerability of the affected individual or population (4) ▪ Position and influence of the ADM in a multi-stage decision pipeline (4) **Reasoning** The assessment should focus on whether the computer program is a key factor in facilitating the decision ("substantially") and whether it has a direct and proximate connection to the decision-making step ("directly"). A system will meet this threshold where its output materially influences the outcome or strongly guides the human decision-maker, particularly where reliance is high and meaningful override is limited in practice. Substantial reliance does not require the system to be determinative but may arise where outputs are consistently used and likely to be followed in practice by decision-makers. This approach ensures that the obligation captures systems that have a real and substantive role in decision-making, while excluding tools that are merely ancillary or administrative.

	A computer program should be regarded as substantially related to a decision where its outputs materially influence, shape, prioritise, rank, recommend, filter or otherwise constrain the range of outcomes realistically available to the human decision-maker. Direct connection should be assessed by reference to causal proximity between the system output and the ultimate decision, rather than the mere existence of human review. The OAIC should expressly recognise that a human-in-the-loop model does not necessarily negate substantial reliance where decision-makers routinely accept, defer to or operationalise system outputs without meaningful independent assessment.

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	The OAIC should recognise the risks of automation bias and 'rubber stamping', whereby human reviewers may place disproportionate weight on AI-generated recommendations. In practice, a system may remain substantially and directly related to a decision even where a human formally retains decision-making authority if the AI output materially shapes the decision-making process or influences the range of outcomes considered. GPTea's use is substantially related because it is a key factor in facilitating the decision, shaping inputs through summaries and recommendations that inform the outcome. It is directly related because its output has a clear and proximate connection to the eligibility decision, even though a human makes the final determination. While a human makes the final determination, this does not preclude the system from being substantially related. In practice, reliance may still be considered substantial where outputs are consistently used as a primary input and are likely to influence decision-makers, particularly in high-volume or time-constrained environments.

	In this context, GPTea goes beyond a purely assistive tool, as its outputs are likely to materially influence or meaningfully guide the decision outcome. This interpretation is consistent with the examples in the consultation paper, which indicate that tools generating scores, recommendations or triage outputs can still be substantially and directly related to decisions where they form a key input into a human decision-making process. While the consultation paper includes helpful illustrative examples, additional industry-specific scenarios (for example in banking, such as credit decisioning, fraud detection or customer risk assessment) would assist entities in applying these concepts in complex, high-volume decision-making environments.

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.	**Ranking (1–5 importance)** ▪ Financial outcomes – **5** ▪ Access to essential services – **5** ▪ Sensitive personal information – **5** ▪ Impact on vulnerable individuals – **5** ▪ Intrusiveness of profiling – **4** **Additional factors** ▪ Duration of impact (short-term vs long-term effects): (e.g. a decision that has ongoing effects over time, such as influencing future interactions or outcomes, versus a one-off interaction with no lasting effect) ▪ Irreversibility of decision (ease of correction or remediation): (e.g. a decision that requires a formal review or dispute process to change versus a routine administrative update that can be quickly corrected) ▪ Reputational or dignity harm – 4 ▪ Lack of individual awareness that ADM is being used – 4 (ACAPS 2026 indicates that 91% of individuals consider this as significant.)

	▪ Scale - number of individuals affected by the same ADM logic – 4 ▪ Lack of / inadequate review or appeal mechanism – 4 ▪ Risk of discrimination or disparate impact on a protected group – 5
Free text comments	The likelihood that a decision significantly affects rights or interests increases where the outcome has material, non-trivial and potentially lasting consequences, particularly in areas involving financial position, access to essential services, or sensitive personal data, and where vulnerable individuals may experience more severe or disproportionate impacts. We recognise that the significance of these factors will vary depending on the context and circumstances of the decision. Although many organisational decisions may involve financial impacts or access to services, only those that result in a material, non-trivial or substantive impact on an individual should be regarded as having a significant effect on their rights or interests. Significance should be assessed based on the magnitude and real-world impact of the decision, including whether it: ▪ results in a meaningful disadvantage or detriment to the individual ▪ materially affects their circumstances, opportunities, or choices in a substantive way ▪ limits or restricts access to important services or opportunities ▪ has a lasting impact or is difficult to reverse in practice The impact is more likely to be significant where decisions involve sensitive personal information or disproportionately affect vulnerable individuals, resulting in amplified or adverse outcomes. This approach ensures that the assessment focuses on decisions with practical and substantive effects, rather than capturing all decisions that are connected to financial outcomes or service access. Additional factors further commentary ADM systems trained on historical data risk encoding and perpetuating historical patterns of discrimination — producing decisions that disproportionately disadvantage individuals on the basis of race, gender, age, disability, or other protected attributes, even where those attributes are not explicit inputs. Where a decision carries a real risk of discriminatory impact, it both significantly affects the rights and interests of the individual and engages Australia's anti-discrimination law framework operating alongside the Privacy Act. This factor warrants "strongly agree" because discriminatory impact is among the most serious harms the regulatory framework is designed to prevent, and because ADM systems are particularly susceptible to it at scale. Additional indicators of significance should include impacts on employment opportunities, housing access, insurance availability, immigration status, reputation, dignity, freedom from discrimination, and participation in digital society. Significance should be assessed holistically having regard to severity,

	duration, reversibility, cumulative effects and whether the decision alters an individual's practical ability to exercise rights, access opportunities or participate in society.

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?	**Vulnerable classes** **Proposed groups:** ▪ Children and young people ▪ Elderly individuals ▪ Financially disadvantaged individuals ▪ People with disabilities, including mental and cognitive impairment ▪ Individuals with limited digital literacy ▪ Culturally and linguistically diverse individuals ▪ Individuals facing homelessness ▪ First Nations These groups may: ▪ be disproportionately affected by decisions, including experiencing more severe or consequential real-world impacts, particularly where outcomes relate to essential services or financial wellbeing ▪ have a reduced capacity to understand, challenge or seek review of decisions ▪ experience greater dependence on the services or systems subject to decision-making ▪ be affected by a high-stakes decision while experiencing circumstances of temporary vulnerability. Review and explanation mechanisms should therefore be accessible to individuals who may be under significant personal stress at the time.

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.	**Significant services or support** **Ranking (1–5 importance)** ▪ Access to essential banking and credit services – **5** ▪ Financial assistance – **5** ▪ Access to healthcare and 'in-home services' – **5** ▪ Access to essential utilities (e.g. electricity, water) – **4** ▪ Access to telecommunications – **3** ▪ Access to educational services – **3** ▪ Physical assistance/support – **3** **Additional examples** ▪ Access to insurance and risk protection products - 3 ▪ Housing and homelessness services – 5 ▪ Employment and labour market services - 5 ▪ Immigration and visa services - 5
Free text comments	A service or support should be considered "significant" where access to it is essential to an individual's financial stability, health, safety, or ability to participate in society. In assessing significance, a risk-based and proportionate approach should be applied, taking into account: ▪ the materiality of the impact on the individual ▪ the severity and duration of the outcome ▪ whether the service is essential rather than ancillary or substitutable

	This approach ensures the obligation is targeted at decisions with real and substantive consequences, while avoiding unnecessary complexity or compliance burden for low-risk or routine activities. Example – Immigration decisions — including visa grants, refusals, cancellations, and citizenship applications — carry among the most significant legal consequences of any administrative decision. An adverse immigration decision can result in detention, removal from Australia, family separation, and loss of employment and housing. The Department of Home Affairs uses ADM extensively in visa processing and risk assessment systems. The affected population includes non-citizens who have limited political recourse and may face language barriers in navigating review mechanisms. These decisions engage both the Privacy Act and Australia's international obligations under the ICCPR and the Refugee Convention, making them paradigm cases of decisions that significantly affect human rights.
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 OAIC should also have regard to the Australian Human Rights Commission Act 1986, the Racial Discrimination Act 1975, Sex Discrimination Act 1984, Disability Discrimination Act 1992 and Age Discrimination Act 2004. These frameworks reinforce the principle that decisions resulting in exclusion, differential treatment or disproportionate disadvantage may significantly affect an individual's rights and interests even where no direct financial loss arises. The OAIC may have regard to existing Australian legal frameworks, as referenced above, to support a consistent interpretation of when a decision has a real and substantive impact on an individual’s rights or interests. In particular: ▪ Administrative law principles, including procedural fairness, which focus on decisions that have a material effect on a person’s interests, such as livelihood, reputation, property or legal status ▪ Anti-discrimination law, which captures decisions that result in unlawful adverse impacts or exclusion, including in relation to employment or access to services ▪ Contract and consumer law frameworks, which recognise impacts on an individual’s rights under agreements and access to goods or services, including where there is financial detriment The OAIC may also have regard to international approaches, to the extent they support the principle that a decision is “significant” where it has non-trivial, material consequences, such as impacts on financial circumstances, access to services, employment opportunities, or risks of exclusion or discrimination.

	Consistent with these frameworks, the threshold for "significantly affect" should focus on decisions that have a meaningful, real-world impact on an individual's circumstances, behaviour or choices, rather than effects that are minor, temporary or easily reversible. A principles-based and risk-focused approach, grounded in materiality, would support clarity while ensuring the ADM obligation remains targeted at decisions with substantive consequences, rather than capturing low-risk or routine activities. In addition, the OAIC may consider: ▪ EU AI Act – the world's first comprehensive AI regulation, which classifies AI systems by risk level and imposes strict transparency and accountability requirements for high-risk applications. It's particularly relevant to the OAIC's work on mandatory guardrails in high-risk settings. ▪ US NIST AI Risk Management Framework – best practice on identifying, assessing and managing AI risks throughout the system lifecycle ▪ Canada's Algorithmic Impact Assessment (AIA) – Requires an assessment of ADMs before deployment. ▪ Ethics based frameworks such as the IEEE Ethically Aligned Design
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	Yes.

affected the interests of Marco?	
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)	In this case, the pricing difference is material and effectively determinative of the outcome, as it directly affects Marco's ability to purchase the product. The differential pricing results in a real financial impact and exclusion from access, which goes beyond a trivial or minor effect. Differential pricing should be considered to significantly affect an individual's interests where the price difference is material in context, rather than based on a fixed percentage alone. As a guide: ▪ 5% → - minor impact/ unlikely to be significant ▪ 20% → may be significant depending on context, particularly where it affects affordability or access ▪ Other (recommended approach): ○ Material impact threshold, where the price difference: ▪ meaningfully affects affordability, or ▪ results in exclusion from access, or ▪ creates disproportionate financial disadvantage. Note that the assessment should not rely on fixed percentage thresholds. A relatively small differential may be significant where it affects affordability or access for a vulnerable individual, while a larger differential may not be significant for another individual. The appropriate test is whether the differential pricing results in material detriment, exclusion from access, or a meaningful reduction in consumer choice.
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	5
The significance of the product or service being purchased	5 Both factors are relevant to assessing whether differential pricing has a substantive impact on an individual's interests. The extent of the pricing differential informs the degree of financial disadvantage, while the nature and importance of the product or service helps determine whether the outcome affects meaningful access, choice or participation. When considered collectively, these factors provide a practical basis for distinguishing impacts that are material and consequential from those that are minor or incidental.

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?	The failure to display the job advertisement should be regarded as a "decision" for the purposes of APP 1.9 because the automated process determines whether an individual is provided with, or denied access to, a particular employment opportunity. Consistent with the broad interpretation of "decision" adopted across administrative, discrimination and privacy frameworks, the relevant consideration is not whether an explicit refusal has occurred, but whether the automated process has materially influenced an outcome affecting an individual's rights or interests.
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?	Further guidance would be beneficial in clarifying the boundaries of "arranged for", particularly in scenarios involving third-party systems and shared decision-making responsibility. Key scenarios where clarification would assist include: ▪ Use of third-party platforms or tools Where an entity uses external platforms (e.g. advertising, recruitment, or analytics tools) that apply their own algorithms, it may be unclear whether the entity has "arranged for" the decision-making or is merely using an existing service. ▪ Configuration versus operation Where an entity configures or sets parameters within a third-party

	system (e.g. filters, audience targeting criteria), guidance would help determine when this constitutes “arranging for” ADM, as opposed to passive use. ▪ Extent of influence or control Clarification would assist where an entity has limited visibility or control over how a third-party system operates but still relies on its outputs in business processes. ▪ Embedded or enterprise software Many systems (e.g. CRM, fraud detection, risk scoring tools) include built-in automated decision-making features. Guidance would help distinguish when use of such features amounts to arranging for ADM, particularly where the functionality is standard or not directly customised.
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?	In addition to the considerations outlined by the OAIC, entities should disclose information that enables individuals to understand the practical impact of automated decision-making on their rights, interests and opportunities, and to exercise meaningful agency in response. In particular, entities should consider disclosing: ▪ The purpose and role of the ADM system Including whether the system is used to make, recommend, prioritise, rank, profile, assess, or otherwise influence decisions affecting individuals. ▪ The degree of automation and human involvement Individuals should be informed whether a decision is fully automated, partially automated, or subject to meaningful human review, including whether a decision-maker can override or depart from the system output. ▪ The categories of personal information used Disclosures should identify the types of personal information relied upon by the system, particularly where sensitive information, inferred information, profiling, or behavioural data are used.

	▪ Key factors influencing outcomes Entities should provide a high-level explanation of the principal factors or criteria that are likely to influence outcomes, without requiring disclosure of proprietary algorithms or commercially sensitive information. ▪ Potential impacts on individuals Disclosures should explain the types of decisions that may be affected and the potential consequences for individuals, particularly where decisions may affect access to employment, housing, financial services, healthcare, education, government services or other significant opportunities. ▪ Rights of review, challenge and redress Individuals should be informed of available review, complaint and dispute resolution pathways, including how to request human review where appropriate. ▪ Accuracy, limitations and risks Where relevant, disclosures should acknowledge material limitations, risks of error, bias, or uncertainty associated with the ADM system and explain how those risks are managed. ▪ Contact points for further information Individuals should be able to readily obtain additional information about the organisation's use of ADM and seek clarification regarding decisions that affect them. The level of detail provided should be proportionate to the nature, scale and potential impact of the automated decision-making activity. Higher-risk or higher-impact uses of ADM should attract more comprehensive disclosures than low-risk or routine applications. Importantly, effective transparency should focus on enabling individuals to understand how automated decision-making may affect them in practice, rather than providing technical descriptions that may be difficult to interpret or of limited practical value.