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Automated Decision-Making Transparency Obligation (APP 1) Issues Consultation

June 2026

About The Royal Australasian College of Physicians (RACP)

The RACP trains, educates and advocates on behalf of over 24,100 physicians and 8,900 trainee physicians, across Australia and Aotearoa New Zealand. The RACP represents a broad range of medical specialties. Beyond the drive for medical excellence, the RACP is committed to developing health and social policies which bring vital improvements to the wellbeing of patients, the medical profession and the community.



We acknowledge and pay respect to the Traditional Custodians and Elders – past, present and emerging – of the lands and waters on which RACP members and staff live, learn and work. The RACP acknowledges Māori as tangata whenua and Te Tiriti o Waitangi partners in Aotearoa New Zealand.

Introduction

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to comment on the Office of the Australian Information Commissioner (OAIC) consultation on guidance for transparency in automated decision-making (ADM). Representing over 30,000 physicians and paediatricians across Australia and Aotearoa New Zealand who are already implementing and interacting with tools that use ADM, the RACP is well positioned to provide a unique perspective on the need for, and contents of, guidance materials that will inform vendors, end-users and those affected by ADM tools in healthcare.

As disease burden grows, increasing pressure is being placed on the healthcare system to continue to provide the high level of effectiveness and efficiency that has come to be expected by Australians. In order to achieve these goals ADM tools are increasingly being used to supplement clinician practice. The RACP expects that artificial intelligence (AI) will transform healthcare, however, currently clinicians are expected to and responsible for providing health care. With this increased use of AI in clinical practice, ADM in clinical tools is similarly expected to become more common. The ADM obligation implemented by the OAIC will ensure that developers of ADM tools, including those embedded with AI, clearly identify and explain how the ADM mechanism within their product works and are transparent about its potential uses and risks.

The provision of guidance on the ADM obligation will set expectations for end-users of ADM tools and consumers such as physicians and their patients. Given that any guidance is likely to be the primary mechanism through which the ADM obligation is understood, developed resources must be applicable to practice, accessible to all parties and comprehensive in its demonstration of the breadth of different use cases of ADM both internal and external to healthcare.

To ensure the continuation of safe and effective care, healthcare providers should understand how ADM tools arrive at their outputs. The RACP believes that transparency and explainability are critical imperatives to the governance of AI and digital health tools that involve ADM. There is already a plethora of areas in healthcare in which ADM tools are being applied such as clinical decision-making support tools, risk prediction, monitoring devices and treatment guidance. The implications of the ADM obligation are more likely to be felt in high-risk tools such as those in the areas outlined above rather than low risk administrative tools. More information about what the RACP considers to be high and low risk uses of AI can be found in the RACP's AI position statement 'Using AI in clinical practice'.[1] The RACP believes that guidance on the ADM obligation should highlight the differences in types of ADM tools, the threshold for ADM obligation applicability and the requirements of the ADM obligation to address the need for transparency and explainability.

The ADM obligation is a disclosure rule, and its implementation highlights the alignment between the OAIC and RACP on the existing opacity of automated processes as a risk that may allow for amplification of biases, inaccuracies or 'hallucinations'. While a step in the right direction, the RACP regards the ADM obligation as a necessary but not sufficient contribution to addressing these risks and feels that this should be explicitly highlighted within the guidance i.e. that disclosure in a privacy policy does not itself make an ADM tool more auditable or safer. This issue needs to be addressed by incorporating legal frameworks and policies such as the Therapeutic Goods Administration (TGA)'s Software as a Medical Device (SaMD) framework and the My Health Records Act 2012.[2,3] Additionally, guidance should seek to differentiate and clarify the implications of the ADM obligation for agents in the healthcare landscape, specifically patients (those impacted by ADM outputs) and clinicians (those employing ADM to generate outputs). For patients, the guidance should provide insight into requirements of vendors and developers to outline what personal information ADM tools are likely to have access to and use. For clinicians, guidance should clarify the level of awareness they are entitled to as a result of the ADM obligation regarding the deployment of ADM tools into their workflow, whether that be vertically or horizontally as well as their level of responsibility to inform patients of ADM involvement in their care.

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[1] Royal Australasian College of Physicians. Position statement: Using artificial intelligence in clinical practice. RACP. 2026. racp-ai-position-statement-using-ai-in-clinical-practice.pdf

[2] Therapeutic Goods Administration. Understanding how we regulate software-based medical devices. 2026. Legislation | Understanding how we regulate software-based medical devices | Therapeutic Goods Administration (TGA)

[3] My Health Records Act (Cth). Federal Register of Legislation. My Health Records Act 2012 - Federal Register of Legislation

Responses to consultation questions

Question 1 - substantially and directly related to making a decision

The factors identified collectively reflect the extent to which an ADM tool shapes human agency, autonomy, and awareness in the decision-making process. The ability to override and the degree of reliance indicate how much control a human decision-maker retains. Integration into workflow and the nature of the output show how embedded and influential the system is. Transparency and explainability ensure that users understand how the system contributes to the decision. Key considerations when using ADM tools include maintaining a meaningful human-in-the-loop role and ensuring interoperability so that ADM outputs can be appropriately contextualised and challenged.

Question 2 - substantially and directly related to making a decision: edge case (generative AI with human oversight)

The NACIA's use of GPTea substantially and directly related to decision-making. GPTea's summaries and recommendations directly inform and substantially shape the eligibility decisions made by NACIA staff. Even though humans retain final authority, the ADM tool meaningfully influences the assessment process. Comparable uses of ADM in healthcare such as in patient triage, demonstrate similar patterns, where AI-generated recommendations can materially affect outcomes for individuals seeking support.

Question 3 - meaning of significantly affecting rights or interests

The use of sensitive information, particularly information that is irrelevant or inappropriate, can heighten the impact of a decision on an individual's rights or interests. Recently passed legislation making it unlawful for insurers to charge people with genetic risk factors higher prices for insurance coverage highlights the need for continued vigilance in this area as ADM tools look to integrate a broader range of data categories into their algorithms. Decisions involving vulnerable persons raise concerns about agency, as these individuals may have limited capacity to understand or challenge ADM outputs. Financial outcomes also carry equity implications, especially where ADM tools may amplify disparities or disadvantage certain groups as in the scenario provided in Question 7.

Question 4 - meaning of significantly affecting rights or interests: vulnerable persons

Vulnerable groups include people with limited English proficiency, individuals with disabilities, children, people in critical or unstable life circumstances, and groups underrepresented in data collection. These individuals may struggle to understand decisions, may not be able to meaningfully contest them, or may be disproportionately affected by biases embedded in ADM tools.

Question 6 - meaning of rights and interests: relevant legal frameworks and policies

The TGA's SaMD framework[4] and the My Health Records Act 2012[5] are two frameworks that have important implementation consequences that the OAIC's guidance must address.

The TGA now explicitly regulates AI tools as medical devices where they are intended to influence clinical decisions or patient care. This means that many AI systems captured by the ADM obligation's 'substantially and directly related to making a decision' criterion have already been or will be subject to a regulatory judgment that they carry sufficient potential impact on health outcomes to warrant device-level oversight. TGA-regulated ADM tools should be treated as satisfying the 'significantly affects rights or interests' threshold under the ADM obligation, creating important alignment between the two frameworks rather than requiring health entities to navigate them independently.

Separately, the My Health Records Act 2012 creates a distinct legal paradigm in which patients already hold access-control rights over their personal health information and can view who has accessed their record and when, yet those same records are increasingly being used as inputs to ADM tools, the level of awareness of which is unclear. The guidance should expressly recognise My Health Records data as a particularly sensitive category of personal information within healthcare ADM, and that the disclosure obligations under APP 1 should be designed in explicit awareness of this overlap particularly given that the OAIC itself administers both frameworks and has an institutional interest in their coherence.

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[4] Therapeutic Goods Administration. Understanding how we regulate software-based medical devices. 2026. Legislation | Understanding how we regulate software-based medical devices | Therapeutic Goods Administration (TGA)

[5] My Health Records Act (Cth). Federal Register of Legislation. My Health Records Act 2012 - Federal Register of Legislation

Question 7 - meaning of significantly affecting rights or interests: fictional edge case (differential pricing)

The inflated price did significantly affect Marco's interest. Marco has stated that he cannot afford the book at the inflated price, meaning the differential pricing directly restricts his access to the product. A higher price reduces demand and can exclude individuals with lower or unstable income.

From a healthcare perspective, essential services should be accessible to all, and pricing essential healthcare products has unique considerations compared to pricing non-healthcare other goods and services. Pricing should reflect the cost of delivery of care and take into account the goals of our healthcare system. Currently many individuals are being priced out of healthcare as a result of system pressures and geographical biases. The RACP believes that access to essential service should not be determined by postcode or wealth. Implementation of ADM tools in healthcare similar to the scenario referred to above may accentuate such inequities and guidance should be developed such that vendors are encouraged to highlight limitations so that end-users are informed. For example, an online healthcare telehealth service that uses an ADM to set prices similar to Daintree may limit access to healthcare services for those in need and lead to poorer health outcomes.

Question 8 - meaning of making a decision: fictional edge case (discriminatory targeted job ad)

It should be considered a decision that Rafqa did not receive a job advertisement. Opaque Window's ADM tool directly determines which candidates see the job advertisement, and this decision materially affects Rafqa's opportunity to apply. The prioritisation of male candidates is discriminatory and reflects a system-level decision made by the platform. Similar risks exist in healthcare, where decisions based on non-representative data can lead to inequitable care, particularly for groups underrepresented in clinical evidence or that were underrepresented in model training/development.

Question 9 - meaning of 'arranged for'

Relevant scenarios requiring guidance include cases where ADM tools are integrated upstream in clinical workflows, such as radiology ADM tools that generate diagnostic insights before a clinician reviews the case. These outputs can influence diagnosis, prognosis, and treatment decisions and guidance should clarify what level of transparency clinicians and patients are entitled to when ADM tools are embedded vertically or horizontally in the workflow.

In rehabilitation or disability care, individuals affected by decisions may be unable to provide informed consent or understand the implications of treatment decisions completely. Guidance should therefore address consent protocols, including deferred consent, where ADM-supported decisions are made on behalf of individuals who cannot meaningfully participate.

Guidance should also provide clarity in the instance of use of ADM tools developed by a third-party vendor in a hospital. The ADM tool may be adapted or modified by the hospital to address local needs. In this instance the hospital is both arranging for and operating the ADM tool.

Question 10 - extent of disclosure

The listed characteristics of ADM disclosures are appropriate, but guidance should ensure that disclosures are practical, accessible to all parties, and reflective of the wide range of ADM use cases across healthcare. Disclosures should clearly demonstrate how ADM tools operate and support meaningful understanding of their role in decision-making. Disclosures should indicate which data is being used in the ADM tool and where the data is derived from. This is particularly critical in healthcare where there may be many fragmented data sources such as blood tests, imaging results, demographic data and clinical notes. ADM providers should also disclose the applicability of the data used by their ADM tool to the Australian context, the applicability to vulnerable groups that may be underrepresented in ADM development and whether outcome data will be fed back into the ADM tool for continuous validation. These considerations have significant implications for the ethical use of, and safety associated with, the outputs of the ADM tool and the sovereignty of data it uses, especially in vulnerable groups.

Conclusion

The ADM obligation represents a harmonised national approach to transparency and the RACP supports the development of guidance to ensure the obligation is properly adhered to and made aware

of, however, regulatory gaps remain. Importantly, as it stands, physicians may have ADM tools deployed in workflows without adequate notice. Similarly, the lack of liability frameworks is a glaring omission within Australia's ADM governance. The RACP calls for liability and accountability frameworks that attach consequences for the developers of ADM tools that are poorly deployed, underdeveloped or inaccurate. Considering the existing gaps and the expectation of future challenges as AI and ADM evolve, the RACP wants to promote awareness of the need to adapt guidance so that it reflects the changing nature of ADM tools. While a 'one and done' approach is beneficial to large AI providers implementing at speed and scale, this is not applicable to healthcare as expectation remains that medical care is provided by humans. The RACP recommends a continuous improvement approach to ADM regulation with reviews of legal frameworks at regular intervals.

The RACP would like to acknowledge and thank the College's Digital Health Advisory Group for their role in developing this submission.

The RACP welcomes the opportunity to engage further with the OAIC on the implementation of these and future reforms and is available to provide additional information or expert input as required.

For further queries or information, please contact [redacted] policy@racp.edu.au.