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Submission to the Office of the Australian Information Commissioner

Automated Decision-Making Transparency Obligation (APP 1)

26 June 2026

File: 2026/39

Regulatory Intelligence and Strategy Branch
Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001
Via email: privacyreformtranche1@oaic.gov.au
cc: [redacted]

To whom it may concern,

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

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this response to the Office of the Australian Information Commissioner (OAIC) consultation on the APP1 transparency obligation for Automated Decisions-Making (ADM)[1].

About ASFA

ASFA, the voice of super, has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians. We unite the superannuation community, supporting our members with research, advocacy, education and collaboration to help Australians enjoy a dignified retirement. We promote effective practice and advocate for efficiency, sustainability and trust in our world-class retirement income system.

Opening remarks

ASFA supports the fundamental objective of increasing transparency around the use of automated decision-making (ADM) programs, in helping people understand when such systems influence decisions about them and the use of their personal information.

[1] OAIC, '*Consultation on Guidance for Transparency in Automated Decision Making*', (18 May 2026)

Notwithstanding this support, we submit there is not enough time between now and 10 December 2026 for entities to undertake the significant work needed to plan, develop, and deliver the operational systems and processes needed to comply with these new obligations.

This includes the need for entities to be able to properly review any third-party arrangements which may encompass the use of ADM, to identify any relevant programs and processes where these are operated by a third-party service provider.

As such, ASFA's initial recommendation is that the formal compliance date be extended by an additional 12 months, in ensuring affected entities are afforded a fair and reasonable period to undertake necessary preparations.

ASFA provides further detailed feedback in the appendix below, which also contains several key recommendations. These primarily relate to the need for substantial clarity around several key terms and definitions, which will be crucial in providing the necessary foundations for entities to accommodate this undertaking, and for establishing a consistent approach across industry.

Key Recommendations

ASFA makes the following recommendations:

1. That the formal compliance date be extended by an additional 12 months, in ensuring affected entities are afforded a fair and reasonable period to undertake necessary preparations.

2. Develop clear guidance distinguishing between programs acting as execution tools versus those acting as autonomous agents

3. Ensure any guidance is scalable where appropriate, and that reporting entities can account for unique contextual factors.

4. That the OAIC refer to the ASFA *Vulnerable Members Guidance Note*[2] for inputs into future privacy regulation relating to vulnerable persons.

5. That the OAIC have regard to existing concepts in current regulatory frameworks in establishing the meaning of 'rights' and 'interests', and those factors which may significantly affect them.

6. Provide specific examples of best practice guidance in delivering additional clarity on the meaning of 'appropriately tailored'.

[2] ASFA, '*Insurance in superannuation: Developing a vulnerable member policy - Guidance Note'*, (June 2021)

Closing remarks

We look forward to continuing to engage with you on these topics. To discuss any of these issues further contact ASFA Policy Manager [redacted] at [redacted] or on [redacted].

Yours sincerely

[redacted]

[redacted]

Chief Policy & Advocacy Officer | ASFA – the voice of super

Appendix – ASFA Response to Consultation Questions

Question One

To assist entities in determining whether a computer program's operation is "substantially and directly related to making a decision," we recommend the guidance distinguish between programs acting as mere execution tools versus those acting as autonomous agents.

Non-Applicable Automation (NAA): A program should not be considered as doing something "substantially and directly related to making a decision" where it performs deterministic, rules-based automation. In these cases, the program applies fixed business rules, prescribed calculations or hard-coded logic exactly as designed, without interpreting context, weighing alternatives, drawing inferences or exercising independent reasoning.

Specifically, this applies where a program:

- Uses inputs that are selected, provided or confirmed by a human, or obtained from a defined source in accordance with pre-set instructions.
- Applies fixed business rules, deterministic thresholds, eligibility criteria, formulas or coded logic that have been specified in advance by humans.
- Produces a mechanical outcome that necessarily follows from those pre-set rules, such as a calculation, validation, routing step or workflow action. The resulting outcome remains attributable to the human-designed rule set, rather than to the program exercising independent judgement.

Automated Decision-Making (ADM): A program should be viewed as doing something "substantially and directly related to making a decision" where it uses probabilistic, inferential or reasoning-based methods to materially shape an outcome. This includes systems that identify patterns, generate scores, classify people or circumstances, recommend a course of action, or otherwise reason from data in a manner that extends beyond the execution of fixed human-defined rules.

For example, where a program:

- Selects, derives, weights or prioritises data inputs, or applies statistical correlation, pattern recognition or contextual inference.
- Applies probabilistic, predictive or reasoning-based methods that infer, evaluate or assess likelihoods, rather than merely following a predetermined rule path.

- Produces an output, score, classification, recommendation or decision pathway that materially influences the final decision because the program has assessed information and shaped the outcome, rather than simply executing predetermined business rules.

Question Two

Yes. In the example provided here, the program made a recommendation, which formed the basis of all future deliberations leading to the final decision.

Question Three

On the factors which could increase the likelihood that a decision could affect an individual's rights or interests, ASFA ranks the choices provided in the following order:

1. Sensitive information
2. Financial outcomes
3. Other: Scale of impact
4. Vulnerable persons
5. Intrusive practices

ASFA also recommends that the OAIC develop scalable guidance which reporting entities may use in accounting for certain contextual factors.

Question Four

To the question of whether a decision affects access to a significant service or support ASFA recommends the OAIC refer to the ASFA *Vulnerable Members Guidance Note*[3] for inputs into future privacy regulation relating to vulnerable persons.

ASFA's guidance note, developed in partnership with the Australian Institute of Superannuation Trustees (AIST) and the Financial Services Council (FSC), and supported by our members, aims to:

- Provide a well-defined, systematic approach to vulnerable members.
- Assist funds and Insurers to proactively identify vulnerable members and minimise the reliance on self-identification by the members themselves.
- Provide a culture of support, protection, and accountability.
- Ensure appropriate support is provided to vulnerable members when it is required rather than an ad hoc approach.

[3] ASFA, '*Insurance in superannuation: Developing a vulnerable member policy - Guidance Note',* (June 2021)

- Empower members to be confident in the decisions they make because they can access and understand the information they need to make them.

With this guidance note representing long-held positions by a significant section of Australia's finance sector, referring to its contents will work to deliver enhanced regulator-industry alignment.

Question Five

On what is considered to be a significant service or support, for the purposes of considering whether a decision affects access to a significant service or support, ASFA ranks the choices provided in the following order:

1. Access to essential utilities
2. Access to telecommunications
3. Physical assistance/support
4. Financial assistance
5. Access to educational services

Question Six

In relation to the meaning of 'rights' and 'interests', along with those factors which may significantly affect them, ASFA recommends the OAIC have regard to existing concepts in current regulatory frameworks to ensure alignment where possible.

Examples of such concepts and frameworks could include:

- The 'serious harm' threshold under the Notifiable Data Breaches scheme[4].
- References to events that cause 'material adverse impact' in APRA's CPS230[5].
- The 'substantial hardship' test within the *National Consumer Credit Protection Act 2009* (NCCP)[6].

Question Ten

ASFA submits that what is suggested in relation to disclosure around ADM, is generally consistent with established industry expectation. Notwithstanding this preliminary alignment, there is clear ambiguity in the lack of guidance on the meaning of 'appropriately tailored'.

[4] OAIC, *'Part 4: Notifiable Data Breach (NDB) Scheme'*, (February 2025)
[5] APRA, *'CPS 230 Operational Risk Management'*, (1 July 2025)
[6] Federal Register of Legislation, *'National Consumer Credit Protection Act 2009'*, (10 June 2025)

ASFA recommends the provision of specific examples of best practice in delivering additional clarity on the meaning of this phrase, and that it also be subject to context-dependent application.

For instance, disclosure that is appropriately tailored for consumers may involve concise, plain-language information, whereas disclosure that is appropriately tailored for regulators may require greater technical detail and supporting information.