PEOPLE WITH DISABILITY AUSTRALIA

A voice of our own

Consultation for Guidance on Transparency in Automated Decision Making

Inclusion Australia

Children and Young People with Disability Australia

JUNE 2026

Copyright information

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About PWDA

People with Disability Australia (PWDA) is a national disability rights and advocacy organisation made up of, and led by, people with disability.

We have a vision of a socially just, accessible and inclusive community in which the contribution, potential and diversity of people with disability are not only recognised and respected but also celebrated.

PWDA was established in 1981, during the International Year of Disabled Persons.

We are a peak, non-profit, non-government organisation that represents the interests of people with all kinds of disability.

We also represent people with disability at the United Nations, particularly in relation to the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Our work is grounded in a human rights framework that recognises the CRPD and related mechanisms as fundamental tools for advancing the rights of people with disability.

PWDA is a member of Disabled People's Organisations Australia (DPO Australia), along with the First People's Disability Network, National Ethnic Disability Alliance and Women with Disabilities Australia.

DPOs collectively form a disability rights movement that places people with disability at the centre of decision-making in all aspects of our lives.

'Nothing About Us, Without Us' is the motto of Disabled Peoples' International.

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Introduction

Thank you for the opportunity to respond to the Consultation on Guidance for Transparency in Automated Decision Making. PWDA has prepared this submission in collaboration with, and on behalf of Inclusion Australia, Children and Young People with Disability Australia, and with input from the Justice and Equity Centre.

Each organisation shares many concerns on behalf of our members, but also has specific areas where Automated Decision Making (ADM) and large language model deployment, referred to as Artificial Intelligence (AI), impacts their members and stakeholders in different ways. We have outlined the work our organisations have done to date and the potential issues they have identified, including some critical issues not being addressed in this consultation.

Each party to this work draws on the lived experiences of members, stakeholders and people with disability. This, together with current research, underpins our submission and the recommendations we have made.

Summary of Recommendations

Recommendation 1 – We recommend using AI/ADM checking functions to assist human operators and never using it to: make decisions without a human-in-the-loop, replace human decision making, or to so constrain the choices a human decision maker has that they cannot decide fairly and appropriately in complex situations.

Recommendation 2 – Mandate that all organisations publish in plain language if they use ADM/ AI, and how it is used.

Recommendation 3 – Mandate that all organisations record and report on the sources and nature of the training data they use, and that they make this information available for auditors.

Recommendation 4 – Set automatic triggers to replace ADM with human decision making when the complexity of a case or risk of bias reaches a threshold identified from annual case audits.

Recommendation 5 – Mandate Australian data sovereignty, and information privacy be applied to all ADM and AI use, with an explanation of security measures and sanctions to be imposed for breaches.

Recommendation 6 – Mandate annual independent ADM/AI audits to identify breaches of the law, risks, failures or inadequacies of process, that trigger the need to replace the use of ADM/ AI.

Recommendation 7 – Ensure an accessible appeal process remains available to everyone who is subjected to ADM/ AI decision making.

Recommendation 8 – Mandate the provision of explanations about ADM/ AI and how it is used in decision making in accessible formats, and that a person must be asked whether they are able to understand or not.

Recommendation 9 – Set the criteria under which ADM/ AI must not be used to make decisions. This should include, but not be limited to, situations where the person cannot understand the explanation of ADM/ AI, complex cases, and situations where the decision proposes removing supports or income essential to a person's health and wellbeing.

Our previous work and perspectives

People with Disability Australia

In its Submission of the NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 PWDA raised concerns about the implementation of automation, the potential for error, inadequate capacity to deal with complex individual circumstances, reduction in human oversight, transparency, accountability, and fairness.

Without human oversight, or opportunity to challenge outcomes that deprive NDIS participants of essential supports, proposed changes that automate decision making risk repeating the level of error and harm associated with Robodebt.

We also are already seeing the damaging impact of algorithmic decision making applied to older Australians. The funding quantum and priority a person receives is based on an assessment by the standard Integrated Assessment Tool. Once assessors input the information from the tool the integrated aged care algorithm makes the decision, which cannot be overruled.

A system like this fails to adequately serve the needs of individuals in complex circumstances and reduced human oversight compromises transparency, accountability, and fairness. Around 1,000 people have requested a review of their assessment decision,[1] and currently there are 3,300 older patients who are medically well yet stuck in hospital beds unable to get the support they need to go home or into aged care.[2]

In this submission PWDA recommended:

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[1] Evelyn Manfield, 4 June 2026, ABC, Aged Care Minister Sam Rae grilled over human involvement in aged care assessments, last accessed 25/6/2026, https://www.abc.net.au/news/2026-06-04/sam-rae-defends-aged-care-assessment-tool/106758892

[2] Emily Anderson, 9 June 2026, ABC, Bed block patients deteriorate during long waits for aged care beds, last accessed 25/6/2026, https://www.abc.net.au/news/2026-06-09/bed-block-hospital-patients-wait-for-aged-care/106748902

- prohibiting automated decision-making for any action that results in NDIS access refusal, funding reduction, suspension, revocation, or debt creation,
- requiring mandatory human review prior to any adverse decision, and
- ensuring all automated decisions are subject to full merits review, including access to the Administrative Review Tribunal.

In our submission to Services Australia on the Automation Artificial Intelligence Ethics Framework PWDA raised the issues that AI and ADM systems are:

- prone to error and hallucination
- unable to differentiate between what is true and untrue
- built by companies and on the basis of technologies that are vulnerable to financial collapse
- developed in ways, and based on technologies, that use exploitative labour practices and energy and water intensive infrastructure that undermines Australia's climate goals and human rights obligations.

The proposed Ethics Model had ignored the need to apply ethical decision making or protect people about whom decisions were being made.

PWDA recommended:

- the introduction of regular expert human audit of the issues raised that negatively impacted customers, especially those from marginalised communities, and the evaluation of the decisions made in order to improve Automated Artificial Intelligence (AAI) performance.
- mandating greater transparency when AAI is used, requiring human review and action to address customer complaints, and co-design of algorithms and processes with people with disability.

Inclusion Australia

Inclusion Australia, PWDA, the Disability Advocacy Network Australia (DANA) and Down Syndrome Australia prepared a joint submission on automated decision making in government services. We explained the risks of using automated decision making (ADM) and the potential for its use to lead to lead to worse outcomes for people with disability who are using Government Services.

We recommend the following safeguards be designed and implemented through co-design with the people who they will impact:

- Legal and institutional protections, such as ensuring the right to appeal automated decisions and access to support
- Improved training in the rights of people with an intellectual disability to ensure public servants and those managing ADM systems can recognise and respond to the needs of people with disability
- Automated triggers for human intervention that require a human being to review or take over handling of a case, including when a person self-identifies that they have a particular disability, condition, or linguistic obstacle that makes using a system or completing a form impossible for them without assistance
- Human-in-the-loop systems that incorporate human oversight and involvement in making the final decisions
- Accessible interfaces where alternative formats such as Easy Read, plain language and phone numbers are provided to help people interact with systems
- The training of ADM systems and human staff needs to be underpinned by review and continuous improvement
- Improved accountability for decisions, not the use of ADM to avoid responsibility

- Making the process for contesting errors or the review of decisions accessible
- ADM systems should be programmed to learn from the history of successfully appealed decisions or identified errors to flag up and refer to a human being in those cases where errors are likely to occur.

Children and Young People with Disability Australia

Children and Young People with Disability Australia (CYDA) in their submission to Services Australia's draft Automation and AI (AAI) Ethics Framework recommended that the draft framework:

- Strengthen its human rights foundations by incorporating human rights obligations relevant to social security, non-discrimination, and the United Nations Convention on the Rights of Persons with Disability (CRPD)
- Acknowledge past harms and provide meaningful safeguards to protect people from automated debt decisions without robust human oversight, transparent reasoning, and strong protections and a process for ongoing monitoring and assurance.
- Improve protections for marginalised and priority groups through mandatory equity impact assessments for medium and high risk AAI initiatives, including analysis of differential error rates and outcomes for disabled people, First Nations people, people with low literacy, and other marginalised groups, publishing transparent reports of errors, and involving affected communities and their representative organisations in the design and review of high-risk systems
- Ensuring contestability, redress and proactive remediation through providing simple, free and accessible pathways for individuals to challenge any significant decision about entitlements, compliance or debt, clear timeframes and standards for responding to challenges and correcting errors. proactive system-wide remediation when errors are identified, and compensation for all affected individuals.

- Establishing minimum transparency standards that include a public register of AAI systems used in decision-making, including purpose, risk rating, proactive disclosure of error rates and known limitations, standard wording in plain language on letters, digital platforms and apps to notify people when an automated or AI-assisted process has been used in their case. This should be available in accessible formats, including Easy Read, Auslan, and multiple languages.

CYDA, PWDA, Inclusion Australia, Australian Autism Alliance, Australian Federation of Disability Organisations Community Mental Health Australia, Disability Advocacy Network Australia, Down Syndrome Australia, National Ethnic Disability Alliance, National Mental Health Consumer Alliance, Physical Disability Australia and Women with Disabilities Australia (WWDA) jointly called on the NDIA to improve the transparency of NDIS computer generated plans by:

- Publicly disclosing when ADM or AI will be used in New Framework Planning – including in the budget allocation process – how it operates, the datasets it relies on, the degree of human oversight and capacity for positive intervention.
- Providing public information and dedicated community briefings on every stage of the Needs Assessment and New Planning Framework, including how the Support Needs Assessment will be used to develop a budget.
- Publishing any legal advice about the reviewability of new framework plans at the Tribunal, and ensure all aspects of the New Framework Planning rules are explainable, can incorporate all relevant information, and that the plan budget is capable of being meaningfully challenged at internal and external review.
- Partner with DRO and DRCOs to jointly agree on a strategy for co-design of all aspects of New Framework Planning and Rules development – including any proposed use of automation – by end of 2025.

In its response to the Social Security Legislation Amendment Bill 2021 CYDA called on the government to:

- protect people's privacy, personal information, to ban the use of facial recognition and tracking technology,
- ensure that people have access to information held on them and which decisions are automated,
- provide timely access to decision-makers, reviews and appeals
- restrict the use of automated decision-making where this has adverse consequences (including a ban on automated payment suspensions)
- establish a standing digital services advisory panel comprising people directly affected, relevant peak bodies and experts to monitor the impact of the use of information technology in employment services, including automated decision-making, and publish advice to government to prevent and eliminate any harms arising from this.

In its response to the Inquiry into the Better Management of the Social Welfare System initiative CYDA raised the concerns of its members and stakeholders related to automated debt notices and recovery of income support payments. This echoes the concerns and hardships raised in the Senate Inquiry into Centrelink Robodebt . Automating processes to deny income support processes or to raise debts has a long history of error, causing hardship and harm.

Questions

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:

[Instructions: Please rank the factors using the above mentioned (1-5) ranking system and include any additional factors]

- Degree of reliance on the ADM system output 4

- Ability and likelihood of human override over an ADM decision 2

- Nature of the output (advisory vs determinative) 1

- Transparency and explainability of outputs 4

- Integration of ADM into decision-making workflow 5

- Other – Process for the subject to opt out of ADM being used 3

Free text comments

To establish whether a computer program assists a human to make a decision and is directly connected to the process, it is critical that the computer's output advises the human worker but that the human has the choice to accept, partly accept, ignore or override the computer's output. If a human is forced to rely on the output of the computer, or is unable to tell that the computer has limited the choices available to the human decision maker based on ADM/ AI, then the computer is replacing human decision making not assisting it, and this could result in critical issues being overlooked or bias being injected into the constrained choices presented.

To understand when it is necessary to override the computer, the worker must actually be able to understand what the computer is doing, and the basis upon which it has prepared the advice. Transparency and explainability require that workers using ADM, and people who are the subject of it, can understand and explain its outputs. To date whilst AI scientists have been able to learn about AI,[3] but they have been unable to explain how AI/ADM work in plain language.[4] It is unsurprising that systems that cannot be explained also cannot be made to work consistently, accurately, and without hallucination.

There also needs to be a process that sets out grounds and a mechanism for clients to opt out of ADM being used to make decisions about them. For example:

- there will be people for whom the understanding requirement cannot be met, whether due to psychosocial or intellectual disability, the inaccessibility of explanations due to language barriers, or other reasons. If this requirement cannot be met, ADM must not be used to make decisions about this person;

- a person may already be contesting the use of ADM, or have suffered harm due to Robodebt or similar computerized decision making, and they must not be retraumatized and forced to submit to computerized decision making;

people for whom the transparency provisions will be insufficient to enable them to take action if the use of ADM creates an illegal outcome. This may be because a process or administrative provision forbids appeal or remedy for a failure of ADM, or because a person has no standing to take action due to citizenship, capacity, age, financial resources or other characteristic inherent to the person.

Additionally, we make two suggestions for assessing when a computer program is used to assist in decision-making.

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[3] Marcus, Eric, and Jonas Teuwen. "Artificial intelligence and explanation: How, why, and when to explain black boxes." *European Journal of Radiology* 173 (2024): 111393.

[4] Chloe Xiang, Vice, 1/11/2022, Scientists increasingly can't explain how AI works, last accessed 25/6/2026 https://www.vice.com/en/article/scientists-increasingly-cant-explain-how-ai-works/

First, drawing on the facts of Pintarich v Federal Commissioner of Taxation [2018] FCAFC 79 and to avoid similar outcomes that may produce absurd results, the OIAC Guidance should capture decisions where ADM has been a part of the decision-making process which has the effect of being a decision impacting a person's rights or entitlements.

Second, drawing on the way ADM contributed to Robodebt decisions, the OAIC Guidance should make clear that 'substantially' should not be interpreted as an assessment of how many steps in a decision-making process use ADM or not, but rather interrogate each use of ADM. The aim should be to capture use of ADM, even if it is discrete in the workflow, that is substantial in terms of the nature of the output.

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 response?

The issue is that GPTea necessarily will have to be built on a set of assumptions that guide it to select words to retain or emphasize in the summary, and based on the words appearing it will then have been given eligibility triggers for candidates based on how it has been instructed to profile them. Neither the candidate nor the NACIA's human staff will be aware of the basis for GPTea excluding some elements from the summary, nor what the triggers for the recommendations are.

The candidate does not know the form of words to use in the chat to trigger eligibility or prioritization for the services they need. The human staff relying on the summary may miss out on seeing important details which, when taken together, would lead them to make a different decision. The act of listening to a person over the phone, or better still speaking to them in person, enables human staff to gather data points about a situation that a chat-bot cannot.

For example, being able to hear that a person is crying, learning that the person cannot hear you properly or understand your words, seeing that a person has visible signs of injury whether from abuse or falling over in efforts to receive or provide care, establishing that the person's first language is not English – all of these are critical factors in making a decision about support eligibility.

GPTea is not evaluating meaning, intersecting conditions, hazards entailed in delayed or reduced support, it is not asking clarifying questions because it understands nothing (including when it fails to understand or misinterprets words). It does not understand when words are used differently, such as slang, and under this scenario it is limiting human decision making and setting priorities based on an algorithm.

GPTea will also be constrained in its interactions by a set of pre-programmed instructions. Programmers are unable to imagine all the possible intersections and interactions that amplify people's needs for support.

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:

[Instructions: Please rank the factors using the above mentioned (1-5) ranking system and include any additional factors]

- Sensitive information 4

- Vulnerable persons 1

- Intrusive practices 3

- Financial outcomes 5

- Other – Membership of a group that has experienced historic discrimination 2

Free text comments

'Vulnerable' is usually a term applied to people when the ways society, power structures, government and services operate causes exclusion, harm, poverty and discrimination. Elders, children, people with disability, women, non-binary people, LGBTI+ people, indigenous people and people from culturally and linguistically diverse backgrounds are often described as 'vulnerable', however social determinants such as access to resources, accessibility and exclusion are the causes of vulnerability, this is not a personal characteristic.

To reduce vulnerability created by systems, people from the cohorts described above are more likely to need to apply for government, social and health services, and suffer adverse outcomes if these are delayed or denied. When ADM/AI is used to set priorities or make decisions it will be trained on previous matters. People who have historically been discriminated against in decision making are likely to continue to be discriminated against due to the historically biased information fed into the system.

Australians are already subjected to intrusive practices when they shop for essential food, in the form of face scanning and profiling by Palantir. This company specializes in using data to create profiles of people, by combining large databases and this data is already

being used by Israeli Defence Forces and U.S. Immigration and Customs Enforcement (ICE). Amnesty International has reported that Palantir is facilitating human rights abuse.[5] With the Australia's supermarket duopoly there is no choice for many people to avoid this data collection, and unlike a phone number that can be changed, a person's facial geometry is permanent. If a person is not allowed to control the access of others to their personal and sensitive information, they are unable to protect their rights and interests.

This issue is amplified when data hacks leak this information, or deals between companies share it in ways that individuals cannot track, control or remedy to protect their rights and interests. There is currently no effective opt out, or way to have a person's data expunged from Palantir, the dark web repositories for data hacks, negative profiling by recruitment agencies, or 'blacklists' created by real estate reference checking agencies. The more data is collected, matched and misused, the less protection individuals have, the closer we get to the Chinese Social Credit Systems,[6] and the greater the threat to our democracy.

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?

As outlined above, vulnerability not something inherent to people, because they are children, elders, have a disability, speak a language other than English, are Indigenous, female, non-binary, LGBTI+, or have a lower income. Vulnerability is created by social

[5] Digital Rights Watch, 1/2/2026, Palantir in Australia, last accessed 26/6/2026 https://digitalrightswatch.org.au/2026/02/01/palantir-in-australia/

[6] Stanford University, Centre on China's Economy and Institutions, Assessing China's "National Model" Social Credit System, last accessed 25/6/2026 https://sccei.fsi.stanford.edu/china-briefs/assessing-chinas-national-model-social-credit-system

systems, power structures, government, corporations, and services that operate to cause exclusion, harm, poverty and discrimination.

Decisions that reduce or remove access to supports, services and protections from systems, companies, governments and processes that create vulnerability significantly affect the rights and interests of people classed as 'vulnerable'.

Can you provide your reasons for your response?

People who then depend on systems, supports and payments to reverse some of the vulnerability that has been created are most likely to have their rights and interests impacted. This includes people with disability (20% of Australians), elders (16% over 65),[7] children (20% under 18), women (50% of Australians), people who are homeless (11%),[8] people living on low incomes (14.2%),[9] people who live in rural and remote Australia (27%)[10], people from Indigenous(3.8%)[11] and CALD(30%)[12] backgrounds. Intersectional experience can also contribute to the disadvantage a person faces, but it is clear that all Australians[13] at some point in their life can be made vulnerable by these systems and structures.

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[7] Australian Bureau of Statistics. (2021). *Population: Census*. ABS. https://www.abs.gov.au/statistics/people/population/population-census/2021.

[8] AIHW (Australian Institute of Health and Welfare) (2026) *Health of people experiencing homelessness*, AIHW, Australian Government, accessed 25 June 2026.

[9] 14.2% of people live below the 50% median poverty line, ACOSS, Poverty and Inequality accessed 25 June 2026, https://povertyandinequality.acoss.org.au/data/poverty/number-of-people-below-the-poverty-line/

[10] Australian Institute of Health and Welfare, 25/11/2025, Rural and Remote Australians last accessed 25/6/2026 https://www.aihw.gov.au/reports-data/population-groups/rural-remote-australians/overview

[11] AIHW (Australian Institute of Health and Welfare) (2026) First Nations People AIHW, Australian Government, accessed 25 June 2026.https://www.aihw.gov.au/reports-data/population-groups/indigenous-australians/overview

[12]AIHW (Australian Institute of Health and Welfare) (2026) Culturally and linguistically diverse Australians, Australian Government, accessed 25 June 2026.https://www.aihw.gov.au/reports-data/population-groups/cald-australians/overview

[13] 100% of Australians have been a child, and if they live long enough will be an elder.

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? For example:

[Instruction: Please rank the services/support using the above mentioned (1-5) ranking system and include any additional examples.]

- physical assistance/support	1
- financial assistance	2
- access to educational services	7
- 'in home services'	3
- access to essential banking and credit services	8
- access to telecommunications	6
- access to essential utilities	5
- other – access to housing	4

Free text comments

What is the purpose of trying to rank these services or supports. For our stakeholders the absence of all but 7 and 8 could cause serious harm or death in the short-to-medium-term. The lack of access to educational and essential banking and credit services will also cause harm, but in the medium-to-long-term.

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 must have regard to the Convention on the Rights of Persons with Disabilities. Mention is made at page 8 of the issue paper of the Australian Human Rights Commission's function to investigate and conciliate complaints of unlawful discrimination including for age, disability, race and sex. However, expecting people experiencing discrimination to have to litigate to uphold their rights and interests abrogates the Australian Government's responsibility to uphold human rights and non-discrimination. The current operation of ADM/ AI is harming the rights and interests of Australians and disproportionality impacting the very groups the government is obliged not to discriminate against.

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 affected the interests of Marco?

Yes

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)

Inflation since COVID-19 has seen grocery, rent and energy prices rise steeply and rates of homelessness, food insecurity and the use of foodbanks rise to rates never seen previously.[14] If differential pricing were only applied to one item, a 5% increase may be tolerable, but differential pricing is applied to everything a person sees. Even a 5% increase on every grocery item would make many people food insecure, and for people living on JobSeeker or other support payments it could mean not eating.

It is important to consider that a high proportion of social housing exists in cities, and often in areas that have 'gentrified' over time and average incomes have risen. People who have lost their housing may go to live with parents or friends. Algorithms may treat a person as coming from a wealthy area and increase prices, but the person's circumstances may be very different than suggested from their address.

The dollar amount of differential pricing

Differential pricing is discriminatory and unethical in most circumstances. The dollar amount of differential pricing that can be tolerated will depend on the other costs and responsibilities a person has. Differential pricing is also likely to cause adverse

[14] ABC, S. Elvery, G. Piper, J. Riga and M. Liddy, See how the price of everything has changed 30/4/2026, last accessed 26/6/2026, https://www.abc.net.au/news/2026-04-30/inflation-tracker-see-how-prices-have-changed/106585314; Food Bank, Australian families at breaking point as food stress hits record high amid interest rate rise 6/5/2026, last accessed 26/6/2026, https://www.foodbank.org.au/australian-families-at-breaking-point-as-food-stress-hits-record-high-amid-interest-rate-rise/

consequences such as increasing pollution and travel to avoid price gouging, secondary or 'black-markets' for goods and services, and a complete loss of trust in retailers.

We have seen that the price difference between tobacco products in Australia and the rest of the world has led to organized crime creating a thriving market for cheap nicotine products, with the Tobacco and E-Cigarette Commissioner's 2024-25 report finding more than half of all tobacco products now sold in Australia and 95.7% of all e-cigarette products are illegal. Organised crime earnt between $4.1 billion and $6.9 billion in profit from this trade for that financial year.[15] In spite of police efforts, the Australian Bureau of Statistics found that for the last financial year 80% of nicotine products that were consumed were illegal.[16]

Internationally the 'Daigou' system arose after the poisoning of baby formula caused Chinese consumers to lose trust in local food safety standards.[17] We could reasonably expect to see a wide range of unintended consequences, exploitation and criminality arise if differential pricing is allowed.

The significance of the product or service being purchased

If differential pricing is to be used, then it should only be applied to luxury goods such as yachts, jewels, sports cars, designer luggage etc. that are unnecessary for the survival, education, health, wellbeing and essential needs of Australians.

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[15] ABC News, Clare Armstrong, 19/3/2026, Australia to toughen tobacco crime laws as cigarette and vape black markets surge, last accessed 26/6/2026, https://www.abc.net.au/news/2026-03-19/tobacco-crime-law-changes-for-illegal-vape-cigarette-market/106469048

[16] Australian Bureau of Statistics. (2026, June 3). *Household consumption of illicit tobacco and nicotine products*. ABS. https://www.abs.gov.au/articles/household-consumption-illicit-tobacco-and-nicotine-products.

[17] ABC, 31/7/2019, The daigou channel — how a handful of Chinese shoppers turned into a billion-dollar industry, last accessed 26/6/2026, https://www.abc.net.au/news/2019-07-31/chinese-daigou-changing-influencing-australian-business/11221498

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?

This is unlawful discrimination based on gender and Opaque Window by using this algorithm has broken the law.[18] It will depend whether Manscon knew, or could reasonably be expected to know, that Opaque Window used an algorithm that operated in this way, whether they too would be considered legally to have discriminated against Rafqa.

It would be impossible for Rafqa to learn of the discrimination, unless she knew someone with detailed knowledge of Opaque Window or its systems. That is why it is imperative the law operates to protect her from the use of algorithms that operate in this way. Digital audits are necessary to ensure the legal and non-discriminatory operation of algorithms

[18] Australian Government, Sex Discrimination Act 1984 No. 4, 1984, last accessed 26/6/2026, https://www.legislation.gov.au/C2004A02868/latest/text

that constrain access to employment opportunities, essential services, healthcare, education, government services and essential information.

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?

Rather than guidance there needs to be a strict liability approach taken to the actions and impacts of ADM and AI systems.

Can you provide your reasons for your response?

Guidance is insufficient to hold multi-billion-dollar international companies accountable for the harmful applications of their ADM and AI systems. Allowing the avoidance of responsibility because a person merely operates the ADM/AI system, rather than being the person who arranged for it to be used, provides far too much scope for the avoidance of responsibility.

Workplace Health and Safety law applies to everyone, creating obligations to act safely, report and address hazards, provide safety equipment, train staff, use safety equipment and processes. When an incident occurs a worker who is provided with defective safety equipment who suffers harm as a result, could have a different outcome if they:

- used it ignorant of its defects, in circumstances where they could not establish the equipment was defective
- used it knowing of its defects, had advised their manager previously, but management failed to provide sound safety equipment
- used it knowing of its defects, but had never advised anyone of the issue
- caused the defect and made no effort to repair or report it.

In the same way deploying or using ADM/AI systems should create obligations to do so lawfully for everyone. If it was impossible for the operator to know they were using ADM/AI, then vicarious liability should be incurred by the person(s) or company who arranged for them to use it unknowingly. There ought also to be vicarious liability where a person tried to learn whether ADM/AI was being used and how it worked, but the employer/ company refused provide them with the information.

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?

Whilst these requirements may help some people understand ADM, this is insufficient to ensure that everyone will understand it. This information is unlikely to be accessible or sufficient for people who need to use Easy Read, assistive communication, translation into languages other than English, people whose first language is Auslan, people who are blind

or have low vision, people who are deaf-blind, and people with some types of psychosocial disability. Children, elders and people who have historically had little/ no access to computers or the internet (whether due to cost, lack of signal, lack of training) also face barriers to understanding ADM.

For a person to contract for a thing, they must be able to understand the nature of the contract, and if this is not possible the contract may be declared ineffective.

> "A contract may be avoided on the ground that a person lacked the capacity to understand the consequences of entering into it."[19]

The current rule relates to cognitive capacity, but it would also be reasonable to expect a similar finding if other barriers prevented a person from being able to access an explanation of the ADM to be used, that they can understand.

Most importantly, whether or not the person understands ADM there is still no mechanism or law being proposed to enable the person to avoid it being used on them.

Discussion

In the race to reduce or replace human workers who make decisions, serve customers, create things, or solve problems, with algorithms, Australian governments and businesses that people depend on are rapidly 'enshittifying'[20] services, products and technologies.

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[19] Australian Government, Australian Law Reform Commission, 20/5/2014, Incapacity and contract law, (11.5) last accessed 26/6/2026 https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-dp-81/11-other-issues/incapacity-and-contract-law/

[20] The term describes the degradation of a service or product brought about by a reduction in the quality of service provided as a consequence of profit-seeking. Doctorow, Cory. *Enshittification: Why everything suddenly got worse and what to do about it*. Verso Books, 2025. Macquarie Dictionary, Word of the Year, 25/11/2024, last accessed 26/6/2026, https://www.macquariedictionary.com.au/woty-2024/

This can largely be attributed to the incorrect application of ADM and AI in what is described as the 'Reverse Centaur' approach.

In automation theory Corey Doctorow describes a "centaur" is a person assisted by a machine—a human head on a tireless automated "horse's" body.[21] A "reverse centaur" is a machine head on a human body.

In the 'centaur' model, the human head does the deciding and the machine functions as the legs to speed up the process up by completing basic tasks rapidly, such as checking address accuracy, adding the correct milage rate based on car size, or performing mathematical calculations.

In case of the 'reverse centaur' algorithms and AI replace thinking, and humans are enslaved and forced to work faster and follow directions no matter how dangerous, hallucinatory, illegal or unjust.[22]

Our previous submissions and our research have highlighted the adverse impacts ADM and the replacement of human decision making has already had on people who have had:

- their NDIS plans reduced,
- Robodebt raised against them,
- insufficient or delayed support under My Aged Care,
- debts incorrectly raised against them related to income support and other social services payments.

Using ADM or AI to accelerate a process is not an improvement if the outcome reduces fairness, breaks the law and undermines the human rights and interests of people. It is

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[21] Doctorow C. Reverse centaurs are the answer to the AI paradox. Medium 11 Sep 2025. https://doctorow.medium.com/https-pluralistic-net-2025-09-11-vulgar-thatcherism-there-is-an-alternative-f1428b42a8fd

[22] Abbasi, Kamran. "Goodbye to the year of the Big Lie; hello, reverse centaur." (2025). Doctorow, Cory. *The Reverse Centaur's Guide to Life After AI: How to Think About Artificial Intelligence Before It's Too Late*. Verso Books, 2026.

especially egregious if it also increases the likelihood or rates of discrimination against people with disability.

Recommendation 1

We recommend using AI/ADM checking functions to assist human operators and never using it to: make decisions without a human-in-the loop, replace human decision making, or to so constrain the choices a human decision maker has that they cannot decide fairly and appropriately in complex situations.

If current systems are built based on information about past decisions, they will incorporate existing bias. For example, the gender bias reflected in the quantum and proportion of NDIS resources men and boys receive, in spite of women, girls and non-binary people experiencing higher rates of disability.[23]

The more intersectional a person's experience, the more complicated it can become to make decisions that are accurate or fair about the support or services they need. Current ADM/ AI systems do not cope well with the complexity that can arise from a person's intersectional experience.

Recommendation 2

Mandate that all organisations publish in plain language if they use ADM/ AI, and how it is used.

Recommendation 3

Mandate that all organisations record and report on the sources and nature of the training data they use, and that they make this information available for auditors.

Recommendation 4

Set automatic triggers to replace ADM with human decision making when the complexity of a case or risk of bias reaches a threshold identified from annual case audits.

ADM/AI exposes Australians to international threats through the loss of data privacy, potential breaches, data misuse, or the insecurity of the multi-billion-dollar circular financial

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[23] The Conversation, D. Piantedosi, L. Molnar, M. Panisset, R. Wilding, There is overwhelming gender bias in the NDIS – and the review doesn't address it, 30/1/2024, last accessed 26/6/2027, https://theconversation.com/there-is-overwhelming-gender-bias-in-the-ndis-and-the-review-doesnt-address-it-220042

transactions currently propping up the AI sector. Only governments have the authority and capacity to protect Australians from these threats, and it is urgent that effective action is taken to prevent the harms already occurring in the USA.

It is also unreasonable to expect individuals to have to pursue legal action against multi-billion-dollar-companies to seek redress for harms.

Failing to act for many years on the issue of harmful algorithms used in social media has led to the Australian Government having to implement ineffective social media bans to try to protect children.[24] Meanwhile an Australian company is using AI to enable people to create child pornography.[25]

It is the responsibility of the Australian Government to proactively protect its people, and not to use, permit to be used, or impose on them, technologies and systems that cause harm, break our laws and discriminate.

Recommendation 5

Mandate Australian data sovereignty, and information privacy be applied to all ADM and AI use, with an explanation of security measures and sanctions to be imposed for breaches.

Recommendation 6

Mandate annual independent ADM/AI audits to identify breaches of the law, risks, failures or inadequacies of process, that trigger the need to replace the use of ADM/ AI

Recommendation 7

Ensure an accessible appeal process remains available to everyone who is subjected to ADM/ AI decision making

Transparency requirements will not be sufficient for many people to understand ADM, or to be able to legally consent to its use on them. Some people with psychosocial disability will never be able to understand and use the digital systems, forms or chat-bots that are required to interact with ADM/ AI systems. People with some types of sensory disability, or

[24] ABC, Wren Gillett, 14/6/2026, Why young people say the social media ban is not working six months after it was introduced, last accessed 26/6/2026 https://www.abc.net.au/news/2026-06-14/why-teens-say-social-media-ban-isnt-working-for-under-16s/106780590

[25] ABC, J. Robertson & J. Landis-Hanley, 20/6/2026, Australian AI porn empire could be generating child abuse material, last accessed 26/6/2026 https://www.abc.net.au/news/2026-06-20/ai-porn-website-our-dream-potential-child-sex-abuse-material/106791410

who require assistive communication tools or Easy Read, may also be unable to understand or use ADM/AI.

Some people from rural and remote areas, or who have low incomes, may never have had access to affordable internet or mobile connectivity, or access to up-to-date digital devices or training to use digital technology. Some older Australians and people whose first language is not English may also be unable to access and use digital technology.

Recommendation 8

Mandate the provision of explanations about ADM/ AI and how it is used in decision making in accessible formats, and that a person must be asked whether they are able to understand or not.

Recommendation 9

Set the criteria under which ADM/ AI must not be used to make decisions. This should include, but not be limited to, situations where the person cannot understand the explanation of ADM/ AI, complex cases, and situations where the decision proposes removing supports or income essential to a person's health and wellbeing.

Conclusion

The use of ADM/ AI offers opportunities to increase the speed and volume of transactions or services, but has been shown to undermine the rights, wellbeing, needs and interests of individuals, and to cause a range of social harms. We support the 'centaur model' of use, where it checks details, improves record keeping, and can speed processes for a human decision maker, so long as its operation is closely controlled, audited, protects privacy, sets opt-out criteria, allows for appeals, and is compelled to obey Australian law.

We strongly oppose the replacement of human decision making with ADM/ AI. We also strongly oppose the use of ADM/ AI use to gather information on, profile, share information about, discriminate against or disadvantage Australians. People with disability, children, elders, First Nations People, people from CALD backgrounds, people who are female or non-binary, LGBTI+ people, people experiencing homelessness or low income, have experienced disadvantage and harms from the use of ADM/AI systems, and deserve to be protected from its harms and uncontrolled use.

PEOPLE WITH DISABILITY AUSTRALIA

People with Disability Australia (PWDA) is a national disability rights and advocacy organisation made up of, and led by, people with disability.

For individual advocacy support contact PWDA between 9 am and 5 pm (AEST/AEDT) Monday to Friday via phone (toll free) on **1800 843 929** or via email at pwd@pwd.org.au

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A voice of our own