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

Your views and submissions

Your views and submissions on the following areas will assist us with developing guidance on the ADM obligation. Questions and fictional Edge Cases are provided to guide your responses.

To make this consultation more accessible to you we have included different response options throughout the questions, including, free text, yes/no, agree/disagree. We have also included a 5 point ranking scale as follows:

1. Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; and 5. Strongly agree

<table>
<tr><td colspan="2">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
Other</td></tr>
<tr><td>Please rank the factors using the above mentioned (1-5) ranking system and include any additional factors.</td><td>Degree of reliance on the ADM system output (5)
Ability and likelihood of human override over an ADM decision (5)
Nature of the output (advisory vs determinative) (4)
Transparency and explainability of outputs (5)
Integration of ADM into decision-making workflow (5)
Other (reliability of the output) (5)</td></tr>
<tr><td>Free text comments</td><td>Many of these seem similar or closely interrelated.

Degree of reliance is inversely correlated with the ability/likelihood of human override. Degree of reliance is correlated with nature of output.

We have suggested 'reliability of output' as a salient factor. The example of a pre-programmed formula in excel calculating a person's age is classified as directly, but not substantially, related to making a decision. This process is</td></tr>
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	deterministic and given the same inputs, the calculation will be performed the same way every time and the same output will be provided. In an alternative example, if we imagine an LLM is summarising a case file and including an age in its summary output, the *goal* of this part of the process is the same, but the LLM is not deterministic and may produce different outputs. Does the lower reliability (and increased risk of error) mean the second example would require disclosure while the first example would not?

Question 2 **Substantially and directly related to making a decision** 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?	1. An AI is generating a summary, so it is 'making a thing'. The summary is being used as a part of the process to assess candidates, so it is directly related to decision making 2. The decision affects the rights or interests of individuals (the candidates who are assessed for eligibility to receive life-changing aged care support) 3. Personal information (candidate profiles) is being used in the operation of the AI The only question is whether the summary is *significantly* involved in the decision making. We believe that it is, because: • It sounds like the summary has been systematised as a part of the workflow for decision-making. For the process to work as it has been designed to, the summary must be generated and referred to. Not using the summary would be a deviation from the workflow process described.

	• The summary makes the decision-making process quicker, which means the summary's inclusion in the decision-making process has a meaningful impact; it is a meaningful contribution. It is not incidental to the process. • An error or inaccuracy in the summary could result in an incorrect decision being made, with an impact on the candidate who may fail to receive care they are eligible for (or who may use resources receiving care that they do not qualify for). While NACIA's human staff have oversight and make the final decision, the fact that the process is quicker means that some work a human would have done previously is being done by the AI chatbot, and a failure of human oversight to detect the error is always possible.

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 of interests? For example: • Sensitive information • Vulnerable persons • Inclusive practices • Financial outcomes • Other	
Please rank the examples using the above mentioned (1-5) system and include any additional examples	• Sensitive information (5) • Vulnerable persons (5) • Inclusive practices (5) • Financial outcomes (1) • Other (nature/context of decision) (5)
Free text comments	We have suggested a low rating for 'financial outcomes', as financial outcomes is a *consequence* of a decision rather than a factor influencing the likelihood that a decision will impact rights or interests. We suggest that financial vulnerability would factor under 'vulnerable persons', or financial outcomes could be renamed ('financial vulnerability', 'financial factors'?). We have suggested adding 'nature/context of decision' to this list. When thinking about likelihood, 'sensitive information' and 'inclusive practices' relate to how the decision is being made, and 'vulnerable persons' relates to who the decision is being made about. The nature or context of the decision covers what decision is being made.

	An automated decision about eligibility for housing support or health care will have more significant impacts on rights and interests than an automated decision about allocation of grant funding for arts projects, even though both may impact individuals' interests.

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?	It meets the criteria of a reportable decision: 1. The entity (Manscon) has arranged for a computer program to do a thing (algorithmically assess candidates based on factors including gender), substantially and directly related to making a decision (whether or not to promote the job opportunity to Rafqa) 2. It significantly affects Rafqa's interests (limitation of employment opportunities, potential financial impact) 3. Personal information about Rafqa was used (gender) in the operation of the program to make the decision The only question is whether it counts as 'making a decision'. In this scenario, there are two possible actions the computer program could take with regard to Rafqa – it could promote the job posting to her, or it could fail to do so. It has been designed to determine which action to take, and to take that action, based on algorithmic factors. If a human were to undertake the same task, the human would definitely be making a decision whether or not to promote

	the job posting to Rafqa. This indicates that the machine is also making a decision when performing this task.