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Consultation on Guidance for Transparency in Automated Decision Making

June 2026

The Australian Retail Council (ARC) welcomes the opportunity to provide feedback to the Office of the Australian Information Commissioner (OAIC) regarding the development of guidance to the Automated Decision-Making (ADM) Transparency Obligation (APP 1) (the guidance).

ARC represents the Australian retail sector. Valued at \$444 billion, retail is the nation's second largest private sector employer, supporting more than 1.5 million jobs, including more young Australians aged 15 to 24 years than any other industry.

Our membership encompasses the full breath of Australian retail, from family-owned small and independent businesses, comprising 95 per cent of our membership, to large national and international retailers supporting communities across metropolitan and regional Australia. With more than 155,000 retail outlets nationwide and a growing online presence, the retail sector is embedded throughout the economy, playing a critical role in the supply chain of Australian businesses.

ARC advocates for policies and reform that drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it. At a time of rapid change, from technological disruption and international competition to shifting consumer behaviour and sustainability expectations, effective policy settings are critical for retailers, workers, consumers and communities.

General comments

ARC supports the policy intent underpinning the ADM transparency obligation. However, the practical value of the ADM obligation relies on the clarity of the proposed guidance.

In retail, ADM has relevance across several different tools, many of which may use personal information and operate in automated or semi-automated ways. These include:

- e-commerce personalisation, product recommendations, search ranking, targeted offers and loyalty programme activity
- customer service triage, complaint routing, refund assessment and returns workflows
- inventory management and fraud, abuse, loss prevention and account security tools
- workforce-related tools, including recruitment screening, candidate ranking, rostering support, performance analytics and case management
- third-party platforms, including marketing technology, recruitment platforms, customer service tools, fraud tools and SaaS products with embedded automation or AI capability.

Our review of the Issues Paper suggests that the threshold concepts in APP 1.7 are capable of broad and uncertain application (our detailed comments are provided below). As currently framed, the obligation risks capturing a very large volume of ordinary digital, customer service and operational tools that do not, in our view, represent the kind of consequential, rights-affecting decision-making the obligation is intended to address. This risk applies to both



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large and small retailers and risks creating significant compliance burdens without a corresponding improvement in consumer understanding. We encourage the OAIC to consider the approach in international jurisdictions (referenced in the Issues Paper) to defining which systems and decisions are significant to be within scope. In relation to ADM guidance, the approach of the EU Regulation 2016/679 (General Data Protection Regulation (GDPR)) in only applying to decisions based *solely on automated processing* is, in our view, a useful model.

In developing the guidance ARC recommends the OAIC:

1. Provide specific clarity regarding the key definitional matters included below. As stated, overly broad guidance could capture most digital and customer tools.
2. Clearly distinguish between ADM that significantly affects rights or interests from ordinary automation, workflow enablement, analytics, personalisation and recommendation tools.
3. Give APP entities clear, workable criteria, supported by concrete and varied examples, to assess scope and compliance obligations with confidence, rather than leaving entities to make judgments without adequate support.
4. Consider the approach in international jurisdictions to defining which systems and decisions are significant to be within scope.
5. Allow entities sufficient time to comply with the ADM obligation. This will support proper disclosure rather than rushed and inadequate compliance.
6. Confirm that fraud prevention ADM systems fall within the commercial-in-confidence exclusion.

Detailed comments

1. Meaning of “computer program”

While we support a technology-neutral approach, the OAIC’s broad interpretation of “computer program” creates significant practical uncertainty. As noted above, a broad range of common tools are used in retail and they could all be captured, including spreadsheets, CRM tools, campaign management platforms, workforce management systems, reporting dashboards, search tools and SaaS platforms.

We encourage the OAIC to adopt a purposive interpretation that focuses on the function performed rather than the technology used. The obligation should target systems that evaluate personal information to produce decisions that significantly affect individuals (subject to our comments on the meaning of “significantly affect” below), not every piece of software that incidentally processes data. A functional threshold would align Australia with international practice, where the focus is on the nature of the decision output rather than the category of tool employed.

Guidance should include clear examples of out-of-scope activity, such as:

- basic calculations or administrative processing
- general analytics and reporting
- workflow routing that does not determine an outcome
- product ranking, search optimisation, content personalisation, marketing segmentation and recommendation tools which merely present options and do not materially affect access, eligibility, contractual rights, employment opportunities, pricing outcomes or access to significant services or support.

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2. Meaning of “making a decision”

Guidance should provide a clear distinction between a decision and a mere presentation of options, a recommendation, ranking, prediction or operational input.

For retail, it will be critical that the OAIC does not treat every digital interaction as a “decision”. For example, showing a customer different products, ranking search results, displaying personalised offers, prioritising website content or recommending an alternative product should not generally be treated as “making a decision” about the individual. Retailers use layered systems where algorithms suggest options (product recommendations, search results, promotional offers) that customers are free to ignore. These are not decisions in any meaningful sense.

ARC submits that “making a decision” should be confined to the point at which a final determination is reached that significantly affects an individual’s rights or interests. Intermediate steps that inform, but do not themselves constitute that determination, should fall outside the obligation. In summary the guidance should clearly distinguish between:

- **Binding decisions** that affect an individual’s rights or access to services (e.g., declining a refund, rejecting a credit application) and
- **Recommendations and personalisation** that present options without restricting choice (e.g., “you might also like...” suggestions, personalised homepage content).

Only the former should trigger the obligation.

3. When is automation “substantially and directly related” to a decision?

The phrase “substantially and directly related” imposes a dual qualifier. Both limbs must be satisfied: the automation must play a *substantial* role (not merely incidental or supportive), and its contribution must be *direct* (not mediated through layers of human judgment or additional inputs).

The OAIC proposes that the obligation applies even where a human makes the final call, provided automation was a “key factor” in that decision. This risks capturing virtually any scenario where staff consult a system before exercising their own judgment. For example, a customer service manager reviewing a flagged return before deciding whether to approve it.

“Substantially and directly related to making a decision” must mean more than incidental involvement in a data workflow. Genuine independent human judgment, informed but not dictated by an automated recommendation, should materially reduce the likelihood that a decision is “substantially and directly related”. Where a human decision-maker exercises independent judgment, the decision is a human one. Treating such decisions as “automated” would discourage the oversight practices the legislation seeks to promote.

ARC submits that the obligation should attach to systems that perform an evaluative function (assessing personal information to determine or influence an outcome) rather than systems that merely store, organise, or surface data as inputs to a separate decision-making process. Many of the technology platforms our members use perform the latter function. Interpreting the provision to capture them would conflate data processing with decision-making.

We recommend safe harbours for situations where a qualified person genuinely reviews an automated recommendation and has the authority to override it.



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In summary, we believe the following factors are material to determining when automation is “substantially and directly related” to a decision:

- is the automated output determinative or close to determinative
- the degree of reliance by the human decision-maker
- whether meaningful human review occurs in practice
- does the human decision-maker have discretion and can exercise it
- is the human decision-maker is practically expected to follow the system output
- whether departure from the output requires escalation or justification
- whether the output is a key factor in the outcome
- whether the system is embedded into the workflow in a way that makes departure from the output unlikely.

4. What does “significantly affect” mean?

ARC requests clear, objective and proportionate guidance regarding the meaning of “significantly affect”. This is critical element for our sector. We note the obligation is triggered when a decision “significantly affects” rights or interests of an individual, including *beneficial* effects and *adverse* effects,

Both the policy rationale and comparable international frameworks focus on decisions that produce genuine adverse consequences. ARC submits that ordinary commercial interactions should not be treated as significant merely because they involve personal information or automated processing. Significance should be assessed by consequence, context and materiality, on the individual in question, not by the mere existence of automation. The threshold should require more than inconvenience, minor non-exclusionary price variation, routine low-impact promotional eligibility criteria, marketing exposure or a routine customer service outcome.

For example, a decision affecting access to pharmacy services, credit, insurance, employment or essential goods in a crisis is, in our view, materially different from a personalised discount, product recommendation or routine online merchandising decision. Targeted advertising or routine personalisation that benefits customers should generally be out of scope for ordinary retail marketing, while targeted employment advertising, exclusionary targeting or advertising that limits access to significant opportunities may need separate treatment.

In summary, ARC recommends the following factors are material to determining when rights are affected beneficially or adversely:

- the materiality of the impact
- is the good or service essential or significant in context
- does the decision affect legal or contractual rights or have ongoing consequences
- is the individual in a vulnerable cohort
- is sensitive information used
- does the outcome restrict access, rather than merely presenting different options.

5. Who has “arranged for” the automated decision?



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ARC welcomes the OAIC's distinction between entities that "arrange for" ADM and those that are "merely operating" technology. We agree this is an important distinction and supports the examples provided in the Issues Paper.

However, we recommend the OAIC provide further scenario-based guidance, regarding the allocation of responsibility in modern retail supply chains and large, global businesses, where multiple parties may be involved in a single automated process. Large retailers rely heavily on third-party SaaS providers, advertising platforms, recruitment platforms, fraud tools, customer service systems and marketplace infrastructure. In many cases, the retailer may configure or use the tool but not control the underlying model, logic or data processing methodology. In such cases, it is not always clear where "arrange for" begins and "merely operating" ends.

If "arrange for" is interpreted to capture technology providers (particularly those providing infrastructure), those providers face an impossible compliance position. They cannot provide the transparency required by APP 1.7 (disclosing in a privacy policy how a computer program is substantially and directly related to making a decision) because they do not know what decisions their users are making, what personal information is being processed, or which individuals are affected.

ARC's view is that the obligation should attach to the entity that determines the purpose and parameters of the automated decision. That is, the entity that decides what decision to automate and how it should operate. Entities providing general-purpose tools, infrastructure, or platforms should not be treated as having "arranged for" every decision their customers choose to make using those services, provided they are not determining the decision logic.

We encourage the OAIC to develop guidance that will assist both technology users and technology providers in understanding their respective obligations. This will benefit the entire ecosystem and avoid disputes about responsibility that ultimately delay transparency for consumers. Practical examples for employers and retailers, including recruitment platforms, ad platforms, returns and refund tools, fraud tools, customer service triage platforms, loyalty platforms and workforce management tools would be particularly useful to the retail sector.

The guidance should distinguish between:

- the entity that determines the purpose and uses the output to make the relevant decision
- the technology provider that merely operates or hosts the tool
- platforms that deliver advertising, search, ranking or audience tools across many customers
- outsourced service providers acting on instructions
- joint or multi-party arrangements where responsibility should be allocated transparently but not duplicated unnecessarily.

6. Keep Disclosure Simple and Principles-Based

ARC strongly supports the OAIC's principles-based approach to disclosure. We encourage the OAIC to resist any push toward prescriptive technical requirements.

Privacy policies are complex and long. We are also informed by members that they are largely unread. Adding pages of technical detail will make this worse, not better.



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ARC supports a plain language, high-level summary in the privacy policy explaining what automated decisions are made and how they may affect customers. The guidance should permit disclosure by category of decision and category of personal information. Category level disclosure is more meaningful for consumers and more operationally sustainable for large retailers with complex technology stacks.

The guidance should remain anchored to APP 1 and should not require disclosure of specific algorithms, model logic, vendor names, or other commercially sensitive information. For a large retailer, an exhaustive list of tools and use cases would be difficult to maintain and unlikely to be useful to customers or employees. A layered approach should be permitted, with high-level privacy policy content supported by more targeted information where appropriate

7. Implementation Timeline

The obligation commences on 10 December 2026, but finalised guidance is not expected until September 2026. That gives retailers roughly three months to work out which systems are in scope, draft disclosures, and update their privacy policies. This is not sufficient. ARC requests a transitional period of at least six months after guidance is finalised, to allow retailers to comply properly rather than rushing out inadequate disclosures that serve no one.

8. Confirm Fraud Prevention falls within the Commercial-in -Confidence Exclusion

Our final point relates to fraud prevention. The costs of retail fraud are extremely significant for consumers. And Australian retailers. Automated detection systems are an essential protection with the ability to assess transaction risk in real time, often in milliseconds. Pre-decision human review is simply not feasible at this speed.

Publicly disclosing how fraud systems work helps fraudsters defeat them. This is not hypothetical. Criminals actively study detection methods to find workarounds. Requiring retailers to explain the logic of their fraud systems in their privacy policies would directly undermine those systems' effectiveness, harming the very consumers the *Privacy Act* is designed to protect.

ARC recommends the OAIC either:

- Establish a formal exclusion for ADM used for fraud prevention; or
- Confirm that fraud system details are protected under section 12B (commercial-in-confidence), and that providing customers with a way to challenge fraud-related decisions after the fact is sufficient.

Thank you again for the opportunity to provide this submission.

Please direct any queries in relation to this submission to our policy team at policy@retail.org.au.