

ANNEXURE B

Cross-Reference: Act 709, the Commissioner's Instruments, and Our Earlier Submissions

To: Submission of Edwin Lee & Partners on Public Consultation Paper No. 1/2026: Artificial Intelligence (AI) and Personal Data Protection Framework

Purpose

Part 1 lists the provisions of Act 709 on which the Core Submission relies, with a line on what each does in the analysis. Part 2 does the same for the Commissioner's instruments and other Malaysian statutes. Part 3 lists the foreign material referred to for comparison. Part 4 shows where this submission takes the same position as our submissions to the National AI Office (31 July 2026) and MyIPO (14 August 2026), so that JPDP can see that we have said the same thing to each regulator.

Part 1: Personal Data Protection Act 2010 (Act 709), as amended by Act A1727

Provision	Substance	Role in the submission
Section 2	Application of the Act to personal data processed in respect of commercial transactions	Whether data collected at scale from open sources is processed "in respect of commercial transactions" at all (Core 5.2)
Section 4	Definitions, including "personal data", "sensitive personal data", "data processor", "third party" and, since A1727, "biometric data"	Foundation for Parts 3, 8 and 12 of the Core; the biometric definition is set out in full at Core 12.2
Subsection 5(2)	Contravention of a Personal Data Protection Principle is an offence; penalty as amended by A1727	The exposure that makes every point in the Core practical rather than academic (Core 2.2)
Subsection 6(1)(a)	Consent required to process personal data other than sensitive personal data	Default rule for training on existing data (Core 5.2)
Subsection 6(2)	Six grounds for processing without consent: contract with the data subject, steps towards a contract, legal obligation, vital interests, administration of justice, functions under law	No legitimate-interests or product-improvement ground (Core 5.2, 7.4)
Subsection 6(3)	Processing must be for a lawful purpose directly related to the controller's activity, necessary for or directly related to that purpose, and not excessive	The Act's own "directly related" test, which the Framework states three other ways (Core 5.2, 5.3)
Section 7, including paragraph 7(2)(c)(i)	Notice and Choice Principle; notice before use for a new purpose	Reuse of data for training (Core 5.2); AI-use notice (Core 1.5)
Section 8	Disclosure Principle: no disclosure for a purpose other than the notified purpose or one directly related, nor to a party other than a notified class, without consent	Consumer-tier AI services that train on inputs (Core 7.4); reuse for training (Core 5.2)

Provision	Substance	Role in the submission
Section 9	Security Principle; controller's duty to ensure processor guarantees; processor directly subject since A1727	Procurement (Core 7.2); fairness anchor (Core 9.2)
Section 11	Data Integrity Principle	Fairness anchor (Core 9.3); material-change triggers (Core 6.2)
Section 12B	Personal data breach notification (inserted by A1727): notify the Commissioner as soon as practicable; notify data subjects without unnecessary delay where significant harm	Breach handling for AI systems (Core 9.2, 9.5)
Sections 23, 24 and 29	Codes of practice prepared by a data user forum or issued by the Commissioner; non-compliance an offence	Contrast with a guideline under subsection 48(g) (Core 2.2)
Sections 30 and 34	Rights of access and correction	Data subject rights in AI systems (Core 8.2)
Section 38	Withdrawal of consent	Withdrawal where data has been used to train a model (Core 8.3)
Section 39	Extent of disclosure: a purpose other than the collection purpose or one directly related	Confirms the "directly related" test (Core 5.2)
Section 40, including paragraph 40(1)(c) and subsection 40(3)	Processing of sensitive personal data: explicit consent or a listed condition; public-availability condition confined to data made public by the data subject; offence and penalty	Sensitive data in training (Core 5.2); biometric data (Core 12.2)
Sections 42 and 43	Right by notice to require cessation of processing likely to cause unwarranted substantial damage or distress; right to prevent processing for direct marketing	The data subject's existing remedies against harmful AI processing; the Framework does not refer to them (Core 8.2, 8.4)
Section 44	Record to be kept by the data controller of applications, notices, requests and other information relating to personal data processed	The existing record the AI Processing Record should sit alongside (Core 10.2, 10.3)
Section 43A	Right to data portability (inserted by A1727): a data subject may request transmission of his personal data to another data controller, subject to technical feasibility	Whether AI-generated inferences fall within portability (Core 8.2, 8.3)
Section 45, including paragraph 45(2)(c)	Exemptions, including research and statistics subject to conditions	Research exemption rarely available for commercial model development (Core 5.2, 5.5)
Section 46	Minister's power to make further exemptions	The route for any future lawful basis for AI development (Core 5.7)
Paragraph 48(g)	Commissioner's function to monitor and supervise compliance, including by circulars, enforcement notices or other instruments	The Framework's legal footing (Core 2.1, 2.2)

Provision	Substance	Role in the submission
Section 129, as amended	Transfer of personal data outside Malaysia	Offshore AI processing; Transfer Impact Assessment; local deployment (Core 7.2, 7.8, 7.9)
Section 130	Offence of knowingly or recklessly collecting personal data held by a data user without that data user's consent	Collection of personal data from another organisation's sources for training (Core 5.5)

Part 2: The Commissioner's instruments and other Malaysian statutes

Instrument	Provision	Role in the submission
Guideline on Automated Decision-Making and Profiling (ADMP Guideline)	Paras 1.3, 5.1 (DPO engaged at earliest stage); 6.1 (ADMP triggers a DPIA regardless of extent); 7.1 (legal or significant effects); 8.1 (biometric data); 10.2.3 (AI-use notice); 10.2.6 (AI not the sole factor)	Part 4 of the Core throughout; the two-level reference point (Core 3.4); biometric data (Core 12.2)
Data Protection Impact Assessment Guideline (DPIA Guideline)	Paras 6.5 (DPIA Lead may be the DPO, a project manager or other personnel); 7.1 to 7.6 (triggers, quantitative thresholds and qualitative factors); 7.3 (no derogation from broader obligations); 12.1 (records kept at least two years after processing ends); worked examples using AI-driven facial recognition (innovative technology) and in-store facial recognition (systematic monitoring)	DPIA alignment (Core 4.3, 4.4); retailer example (Core 5.8); biometric data (Core 12.2)
Data Protection by Design Guideline (DPbD Guideline)	Cross-referred at Framework para 11.3	Local deployment as a DPbD measure (Core 7.9)
Guidelines on the Appointment of Data Protection Officer; Circular No. 2/2025	Appointment thresholds (more than 20,000 data subjects; more than 10,000 for sensitive data including financial information; regular and systematic monitoring); DPO's core responsibilities including monitoring compliance (para 8.2)	DPO appointment distinct from duty to assess (Core 4.4); DPO oversight of records (Core 10.2)
Circular No. 1/2025 (Data Breach Notification)	Notification to the Commissioner within 72 hours; to data subjects within seven days of that notification where significant harm; staged completion within 30 days; records kept for two years; prescribed particulars	Four AI-specific fields; processor notification window (Core 9.2, 9.5)
Guidelines on Cross-Border Personal Data Transfer	Transfer Impact Assessment and its factors; record keeping for transfers and TIAs (para 16)	Additional TIA factors for AI services (Core 7.8); records (Core 10.2)
Personal Data Protection Standard 2015	Baseline security, retention and integrity measures	Cross-reference at Framework para 32 (Core 9.4)
National Guidelines on AI Governance and Ethics (2024)	Fairness among the principles	References (Core 11.3)

Instrument	Provision	Role in the submission
National AI Action Plan 2026-2030	Initiative E14 (coordination on revisions to Act 709)	Route for the lawful-basis question (Core 5.7)
Cyber Security Act 2024 (Act 854)	Obligations of national critical information infrastructure entities	Cross-reference at Framework para 32 (Core 9.4)
Evidence Act 1950	Section 90A (documents produced by a computer)	Records under Part J as evidence (Core 10.5)
Copyright Act 1987 (Act 332), proposed amendments under consultation	Text and data mining exception; source records	Coordination between JPDP and MyIPO; one set of records (Core 5.6, 10.3)

Part 3: Foreign material referred to for comparison only

Source	Substance	Where referred to
Singapore PDPC, Advisory Guidelines on use of personal data in AI recommendation and decision systems (2024); Advisory Guidelines on generative AI (July 2026)	Lawful basis for training; AI-specific notification; responsibility across the model supply chain; access and correction against a trained model	Core 11.3
Hong Kong PCPD, Model Personal Data Protection Framework for AI (2024); Checklist on guidelines for the use of generative AI by employees (2025)	Governance model; employee use of generative AI tools	Core 11.3; the shadow-AI question at Core 7.6
UK ICO, Guidance on AI and data protection	General	Core 11.3
ISO/IEC 42001	AI management system standard	Due diligence under Framework para 20.2 (Core 7.7, 11.3)
Regulation (EU) 2024/1689 (Artificial Intelligence Act)	Recital 12 (exclusion of rules-based systems); Article 9(8) (testing against pre-defined metrics); Article 3(34) (definition of biometric data); Annex IV (technical documentation)	Core 3.3, 6.2, 11.3, 12.3

Foreign law is cited for comparison only and is not relied on as authority. The Framework is, and should remain, built on Act 709.

Part 4: Consistency with our earlier submissions

This submission	AI Governance Bill submission (31 July 2026)	Copyright Act submission (14 August 2026)
R1: status-and-effect clause	¶30: "due regard" needs a demonstrable floor	
R2(a): exclude rules-based systems	¶23: closing limb of the AI System definition captures rules-based tools; own-practice example	

This submission	AI Governance Bill submission (31 July 2026)	Copyright Act submission (14 August 2026)
R2(c): map AI Service Provider onto processor and third party	R3: map Developer and Deployer onto controller and processor	R11: obligations attach at deployment in Malaysia
R3: align with ADMP Guideline; human oversight by capability	¶27 and R9: Principles 1 to 3 already have content in the ADMP Guideline; ¶30-31 and R12: oversight by capability and by degree	
R4: state the law on training; refer the reform question upward; coordinate with MyIPO	Finding 2 and R10: no settled lawful basis for training; do not draft as if one exists; raise with the Commissioner	Part 3 and R6, R7: a TDM exception clears only the copyright gate; JPDP and MyIPO to issue aligned guidance; one set of records
R6: procurement; unobtainable due diligence; deployment point	¶24, R7 and Annexure C: foreign developers restrained by home law from producing documentation; Deployer as compliance interface	R11: transparency obligations attach to making available in Malaysia
R6(e): Transfer Impact Assessment for offshore AI services	R18: offshore AI flows governed by section 129, not a new standard	
R7: data subject rights against a trained model	¶17: Singapore PDPC guidelines on access and correction against a trained model	
R8(a): fairness anchored in the Act	¶29 and R11: add a fairness principle grounded in Malaysian materials	
R8(c): four AI-specific fields in the breach form	¶42 and R16: the same four fields as a superset of Circular No. 1/2025	
R9: one record; templates; DPO as owner	¶38: the DPO is the natural owner of AI risk classification; Annexure A (Governance Q4): joint guidance note, DPIA crosswalk, combined incident form, SME template	R5: source records and a published summary at guideline level
R10: boundary with the Bill; one assessment per system	R1 and R16: the Commissioner as Sectoral Lead; mutual recognition of the DPIA and the Bill's assessment	
R11: biometric data		

Recommendations R5 (material change and testing) and R11 (biometric data) are new to this submission.

Note on verification

The Malaysian provisions in Parts 1 and 2 were checked against the consolidated text of Act 709, the text of Act A1727 and the Commissioner's published instruments before this Annexure was settled. Foreign provisions in Part 3 are cited from their published texts.

This document is prepared by Edwin Lee & Partners. It is submitted in response to a public consultation and does not constitute legal advice to any person. Specific advice should be sought for particular circumstances.