



29 May 2025

Tēnā koe

Official Information Act request

Thank you for your email of 10 March 2025, requesting reports on automated decision-making provided to Ministers and Leadership Team since January 2020.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on your request set out below.

Please find the following documents attached:

- *REP/24/11/1051 - Discussion about shaping MSD's work programme – Policy priorities*
- *REP/24/10/1009 - Shaping MSD's work programme*
- *REP/24/3/257 - Overview: Strengthening the Ministry of Social Development's Position in its Use of Automated Decision-Making*
- *REP/24/3/258 - Automated Decision-Making Legislative Enabling Framework*
- *REP/24/3/259 - Safeguards for the Ministry of Social Development's Use of Automated Decision-Making*
- *REP/23/12/958 - Automated decision-making*

Some information is withheld under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

Some information is withheld under section 9(2)(h) of the Act in order to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

27 further documents have been identified as in scope of your request. These documents are budget sensitive as part of Budget 2025, and are refused in full under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

For the sake of clarity, the Ministry considered the scope and response to your request prior to Budget 2025 decisions and announcements on 22 March 2025. I apologise that there has been a delay in providing this response to you and should you wish to make a further request now that Budget 2025 decisions have been made, please do so.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line extending to the right.

Anna Graham
General Manager
Ministerial and Executive Services

Report



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Date: 15 November 2024 **Security Level:** In Confidence
To: Hon Louise Upston, Minister for Social Development and
Employment
File Reference: REP/24/11/1051

Discussion about shaping MSD's work programme – Policy priorities

Purpose of the report

- 1 To support your policy priorities for the welfare system, this report provides information for discussion at this week's Ministry of Social Development (MSD) Officials meeting (for the week starting 17 November 2024). It attaches:

- s9(2)(f)(iv)
- [REDACTED]

Context


- 2 We provided you with advice about "Shaping MSD's work programme" [REP/24/10/1009 refers]. The paper canvassed the key pressures on MSD's work programme, considering current frontline capacity. It also outlined that we wanted to discuss the opportunities and choices you have in the short, medium, and longer term to deliver on your priorities for the welfare system.
- 3 When this was discussed at your meeting with MSD Officials on 4 November 2024 we heard from you:
 - an acknowledgement that frontline is at capacity and that we need to give some time to embed current and upcoming changes
 - that your interest for "must do" within the portfolio is broadly:
 - Jobseeker Support reduction target (this has been the focus of Year 1 of the 54th Parliament of New Zealand)

s9(2)(f)(iv)

Work programme scenarios are attached

- 4 We have attached a view of the work programme where things are more fixed (Appendix 1). Within this view we want to discuss what the priorities are between now and mid-2027 and how we can start to sequence this.
- 5 This is not a full and complete picture of MSD's work programme but covers policy development and advice around settings under the Social Security Act and advice related to the Jobseeker Reduction Target. Other areas where you will receive advice include on Prototyping Social Investment Outcomes Contracts, and the Pou Tāngata work programme.
- 6 We appreciate that firming up the future work programme will need to be iterative. Building from the key messages from 4 November, we have pulled together work programme scenarios, shown in Appendix 2 to serve as a starting point for what is included in the policy work programme. Discussion about the scenario that you are most interested in would then allow us to provide a view of the sequencing of advice between now and 2027.
- 7 These carry several assumptions, including:
 - MSD cannot within current resourcing provide advice on, or deliver change in all the areas indicated in advice or discussions held to date
 - s9(2)(f)(iv)
 -
 - that there are some areas where you have choices but adding more would need you to take something of similar size off the table
 - all of the items will have an impact on the frontline, however the true extent of this will not be apparent until we do the work
 - this does not acknowledge items that MSD provides advice on for other portfolios (e.g. Seniors, Housing, Youth, and Children's Portfolios).
- 8 The four scenarios are:
 - **Scenario 1: Balanced work programme.** Under this scenario the work programme would have something being progressed against each of the priority areas.
 - s9(2)(f)(iv)

s9(2)(f)(iv)



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Key questions for discussion

9 We have some key questions that could be used to guide the discussion:

Overall direction

- Do you have any direction for us on the expectations to deliver further Coalition Agreement commitments this Term?

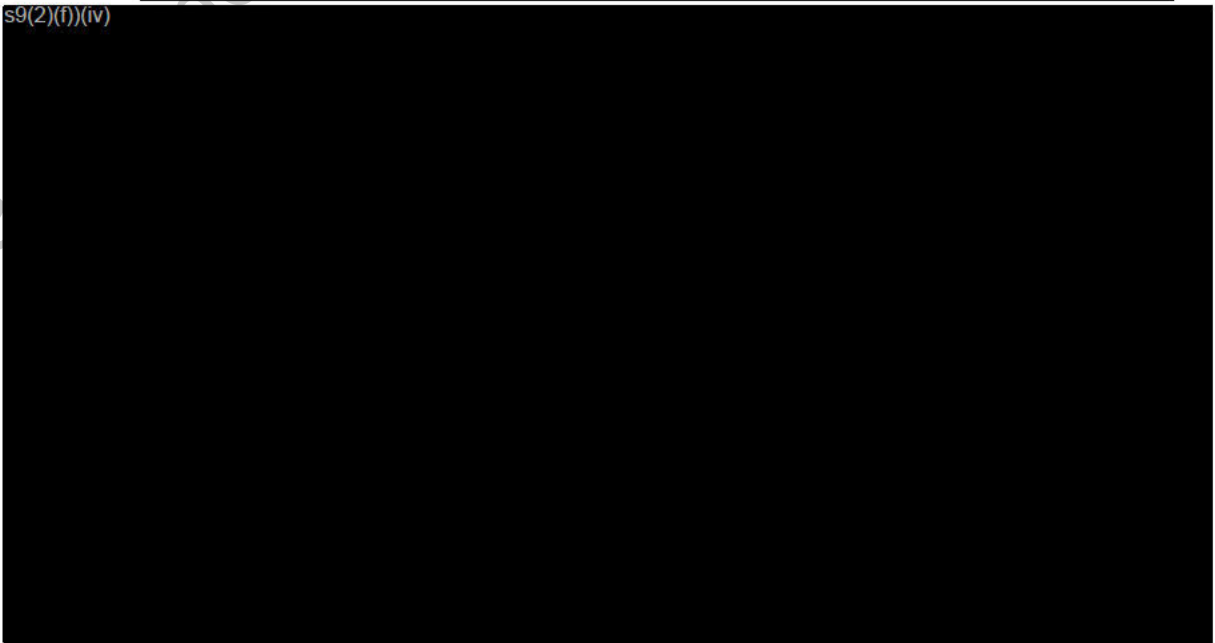
Jobseeker target

- Are you expecting more fundamental changes to contribute to achieving the Jobseeker Support target this Term, such as:

– s9(2)(f)(iv)

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s9(2)(f)(iv)



s9(2)(f)(iv)

Refining the work programme and updating as we go

- How might we keep iterating the work programme with you and your office, with:
 - a focus on what needs to be started or well underway in 2025?
 - a view to providing advice on sequencing of the work across 2024/25 through 2026/27?
- Acknowledging how things change over time (priorities, economic conditions etc.) and that trade-offs will need to be made over this term, do you have a preferred approach for:
 - how trade-offs are surfaced?
 - how we seek your decisions to trade-off work items?

Appendix

10 Appendix 1: s9(2)(f)(iv)

11 Appendix 2:

Recommended actions

It is recommended that you:

- 1 **discuss** the content of this paper and s9(2)(f)(iv) with officials on Monday 17 November 2024.


Simon MacPherson
Deputy Chief Executive
Policy

15 / 11 / 24
Date


Hon Louise Upston
Minister for Social Development and
Employment

2024/12/04
Date

Report



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Date: 3 April 2024

**Security
Level:**

IN CONFIDENCE

To: Hon Louise Upston, Minister for Social Development and
Employment

**This report contains legal advice and is legally privileged. It
should not be disclosed without further legal advice.**

Overview: Strengthening the Ministry of Social Development's Position in its Use of Automated Decision-Making

File ref: REP/24/3/257

Purpose of the report

- 1 This is the first report in a suite of three providing you with advice on the Ministry of Social Development's (MSD) use of automated decision-making (ADM). This is Paper 1: Strengthening the Ministry of Social Development's Position in its Use of Automated Decision-Making.

Paper 1: Overview: Strengthening the Ministry of Social Development's
Position in its Use of Automated Decision-Making
Overview of MSD's current use of ADM and recommended next steps in
the ADM work programme

Paper 2: Automated Decision-
Making Legislative Enabling
Framework

Seeks your agreement to policy
decisions relating to an enabling
provision for the use of ADM.

Paper 3: Safeguards for the Ministry
of Social Development's Use of
Automated Decision-Making

Seeks your agreement to policy
decisions on safeguarding the use of
ADM, subject to Paper 2 decisions.

- 2 This report provides you with an overview of the use and benefits of ADM, the history of our work on ADM, advice received from the Crown Law Office (CLO), and next steps in taking the proposals to Cabinet should you agree to the recommended approach.

to advocate for this kind of approach. We recommend that you forward this suite of reports to Ministers who may be involved in leading this work.

Recommended actions

It is recommended that you:

- 1 **note** that automated decision-making (ADM) is a critical tool used by the Ministry of Social Development (MSD) to support an efficient and modern welfare system
- 2 **note** that this is the first report of a suite of three providing you with advice on strengthening MSD's position in its use of ADM
- 3 **note** the Crown Law Office advice received in the process of developing these proposals
- 4 **agree** that officials will prepare a draft Cabinet paper for your consideration, seeking agreement to the policy decisions outlined in companion papers, REP/24/3/258 *Automated Decision-Making Legislative Enabling Framework* and REP/24/3/259 *Safeguards for the Ministry of Social Development's Use of Automated Decision-Making*

AGREE / DISAGREE

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s9(2)(h)

- 6 **endorse** the proposed timeline and next steps for Cabinet decisions

ENDORSE / DO NOT ENDORSE

- 7 **agree** to forward this suite of three reports to Ministers who may be involved in leading any cross-government work on digitising government and other related work, in particular, to the Minister for the Public Service, Minister of Internal Affairs, Minister of Justice, Minister for Digitising Government, Minister of Science, Innovation and Technology and Minister of Statistics.

AGREE / DISAGREE

3.4.24

Date


Simon MacPherson

Deputy Chief Executive Policy



Hon Louise Upston

Minister for Social Development and
Employment

20240507

Date

Automated decision-making helps the Ministry of Social Development to efficiently deliver support to clients

- 10 Automated decision-making (ADM) is a tool that can support the Government to deliver efficient and modern services at scale. ADM is used by government agencies in New Zealand and internationally.
- 11 ADM is defined as 'a decision within an automated process where there is no substantial human involvement in making the decision (including statutory decisions)'. Automation is the use of electronic systems to replace repeatable processes to reduce dependency on manual actions or interventions. If there is a decision a human is still involved in the decision-making. ADM occurs when the electronic system makes a decision within an automated process where there is no substantial human involvement in making that decision. Thus, automating parts of a *process* is different to automating a *decision* within the (automated) process.
- 12 ADM is, technically speaking, a form of artificial intelligence (AI). However, it is important to clarify that our current ADM does not include generative AI, for example large language models. There is ongoing work exploring the broader use of AI across government which we are supporting (this is discussed further in Paper 3).
- 13 As we have noted before, an example of a process that uses ADM is the granting of the Winter Energy Payment (WEP), which helps people with their household heating costs during the winter period. As at June 2022, the Ministry of Social Development's (MSD) systems automatically made the decision to grant WEP to over 858,000 recipients by following rules-based eligibility criteria. To process all WEP grants manually, MSD would require the equivalent of 600 staff per day for an eight-week period.
- 14 In December 2023 we provided you with advice on MSD's use of ADM [REP-23-12-958 refers]. Some key points from that advice include that:
 - many government agencies in New Zealand and around the world are introducing and using automation and ADM to deliver timely and modern services at scale
 - ADM is a critical enabler of our Te Pae Tawhiti transformation programme to ease administrative burden on clients and staff; ADM will be a critical enabler for the new service experience platform to improve how MSD delivers support
 - the use of ADM can support effective implementation of Government policy priorities
 - there are high-profile examples where the use of automation and/or ADM has caused harm, for example the Robodebt scheme in Australia; we are mindful of mistakes made in other contexts and the importance of avoiding them.

As outlined in paragraph 22 MSD has undertaken considerable work to ensure our safe use of ADM. This is detailed in Paper 3.

ADM is a critical part of MSD's system, now and in the future, so we can continue to deliver improved client outcomes

This section contains legal advice at paragraph 16 and is legally privileged.

15 Our previous advice also outlined the key benefits of ADM. These include:

- 15.1 **Scale and efficiency gains:** ADM allows MSD to process large volumes of applications and helps to ensure responsive and timely services.
- 15.2 **Client outcomes:** ADM can improve the speed and smoothness of processing, and parity of treatment, and allow staff more time to have meaningful interactions with clients.
- 15.3 **Accuracy of decision making:** MSD has strong safeguards which give us comfort that our ADM processes are accurate and reliable.
- 15.4 **Accessibility of support and responding to public expectations around service access:** MSD's appropriate use of ADM can improve the accessibility and timeliness of the support clients receive from us. This can remove a key barrier to access for clients, especially for those who are on shift work and those with dependent children. The ability to apply online means that clients do not always need to visit a Service Centre within standard office hours for some types of assistance. ADM can also provide self-service access, which aligns with public expectations around the digitisation of government services, including around how they interact with and receive services amid rapid technological advancements.

16 While ADM does confer a range of benefits, an equally important part of our work has been assessing situations, with the benefit of legal advice, where the use of ADM is not appropriate.

s9(2)(h)

s9(2)(h)

We have been consulting with the Crown Law Office since 2017 to ensure our use of ADM is lawful

This section contains legal advice at paragraphs 17 – 20 and is legally privileged.

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s9(2)(h)

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We are proposing a package of legislative reform to strengthen MSD's position in its use of ADM

This section contains legal advice at paragraphs 22 and is legally privileged.

- 21 We have developed a package of policy proposals that respond to CLO advice on strengthening MSD's position in its use of ADM. This is the first report in a suite of three providing you with advice on MSD's use of Automated Decision-Making. This is Paper 1: Strengthening the Ministry of Social Development's Position in its Use of Automated Decision-Making.

22 **Paper 2: Automated Decision-Making Legislative Enabling Framework.**

s9(2)(h)

- 23 **Paper 3: Safeguards for the Ministry of Social Development's Use of Automated Decision-Making.** Subject to your agreement to expand MSD's enabling provision, we seek your agreement to similarly expand MSD's ADM safeguards accordingly, to cover other MSD uses of ADM. This paper also outlines our advice on the need for an all-of-government approach for ADM.

- 24 MSD has had discussions with the Office of the Privacy Commissioner, Public Service Commission, PCO and Treasury on issues relating to the lack of an all-of-government approach. We have also engaged with the Government Chief Digital Officer and Government Chief Privacy Officer in the development of this work. MSD also participates in the Government Legal Network Emerging Technology Legal Group, where topics of discussion have included the use of ADM. A full list of stakeholders consulted in the development of these papers is attached as Appendix 1.

- 25 Overall agencies were supportive of an all-of-government approach and the papers, however:

25.1

s9(2)(h)

- 25.2 the Office of the Privacy Commissioner and the Government Chief Privacy Officer in particular consider that the ADM Standard could either be incorporated as secondary legislation and/or high-level principles that the Standard must include could be included in primary legislation. This is addressed in Paper 3.
- 25.3 a number of agencies have urged MSD to further engage with iwi Māori about ensuring our safe use of ADM. MSD agrees that this is important and plans to start engaging with representatives of iwi Māori over the coming months.

If you agree to these proposals, then the next step is to seek Cabinet agreement

We are seeking your agreement to the policy proposals outlined in the companion papers. A Bill will be required to introduce the clear legislative authority enabling the use of ADM across MSD's portfolio responsibilities and expand our safeguards. If you agree to the proposals, we will provide you with the necessary support to seek Cabinet agreement to develop this Bill in July 2024.

s9(2)(f)(iv)

- 26 The proposed timeframe for consultation and a possible Cabinet process are as follows:

| Item | Date |
|--|---------------|
| Draft Cabinet paper to Minister | 28 June 2024 |
| Revisions as required by the Minister | 3 July 2024 |
| Ministerial and cross-party consultation | 5 July 2024 |
| Final paper to Minister for approval to lodge | 19 July 2024 |
| Paper considered at SOU | 31 July 2024 |
| Cabinet consideration | 5 August 2024 |

Work is continuing on other matters related to ADM

This section contains legal advice at paragraphs 27-30 and is legally privileged.

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s9(2)(h)

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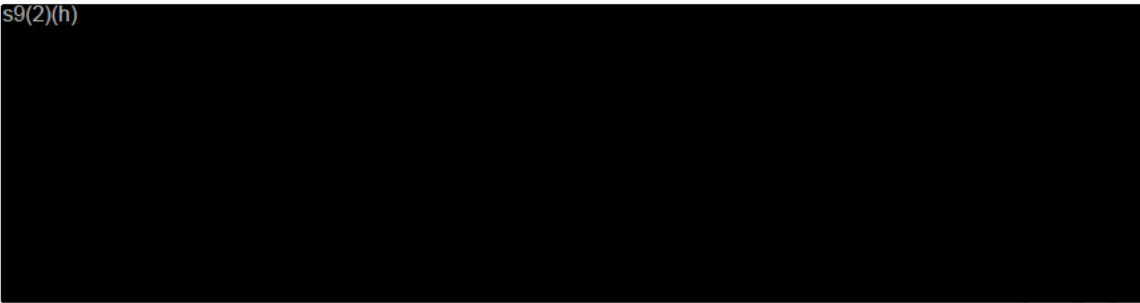
s9(2)(h)

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31 The process for Declare Wages via MyMSD will be considered as part of advice on wider opportunities to improve how MSD treats income in the welfare system which you will also receive in May.

32 s9(2)(h)



33 We are preparing advice on opportunities to shift other welfare policy and legislative settings to settings that, will enable better use of technology in future.

34 We are also exploring opportunities for the use of safe and appropriate use of ADM in the delivery of your manifesto commitments. Our initial assessment is that ADM may provide us with opportunities to further free up staff time to create more space for important conversations, for example on employment support.

35 MSD strongly supports an all-of-government approach to the use of ADM, to ensure alignment in agencies' approaches and to maximise efficiencies in safeguarding and monitoring the use of ADM. This is outlined in Paper 3. Our view is that an all-of-government approach could enable greater opportunities to further strengthen government use of ADM. We are actively participating in current cross-agency processes on matters relating to digitising government to advocate for this kind of approach. Examples include the acceleration of the digitisation of government services and developing a work programme on the use of Artificial Intelligence. We will continue to participate in those processes and advocate for a joined-up view on the use of ADM.

Appendices

Appendix 1: List of agencies/organisations for external consultation on the suite of ADM papers

s9(2)(h)



Author: Charlie Prout, Senior Policy Analyst, Welfare System Policy

Responsible manager: Leah Asmus, Policy Manager Welfare System Policy

Appendix 1: List of agencies / organisations for external consultation on the suite of ADM papers

| Agency name |
|--|
| Office of the Privacy Commissioner |
| Crown Law Office (CLO) |
| Parliamentary Counsel Office |
| Department of the Prime Minister and Cabinet |
| Public Service Commission |
| Treasury |
| Government Chief Digital Officer |
| Government Chief Privacy Officer |
| Te Kōtui Whitiwhiti Māori Crown Relationships - Department of Internal Affairs |
| Community Digital and Identity Policy unit – Department of Internal Affairs |
| Interim Centre for Data Ethics and Innovation |
| Ministry of Business, Innovation and Employment |
| Inland Revenue |
| Ministry of Education |
| Ministry of Health |
| Veterans' Affairs |
| Whaikaha – Ministry of Disabled People |
| Ministry of Housing and Urban Development |
| Oranga Tamariki |
| Ministry of Justice |
| National Beneficiary Advocacy Consultative Group |

Report



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Date: 3 April 2024

**Security
Level:**

IN CONFIDENCE

To: Hon Louise Upston, Minister for Social Development and
Employment

**This report contains legal advice and is legally privileged. It
should not be disclosed without further legal advice.**

Automated Decision-Making Legislative Enabling Framework

File ref: REP/24/3/258

Purpose of the report

- 1 This is the second report in a suite of three providing you with advice on the Ministry of Social Development's (MSD's) use of Automated Decision-Making (ADM). This is Paper 2: ADM Legislative Enabling Framework.

Paper 1: Overview Paper: Strengthening the Ministry of Social Development's Position in its Use of Automated Decision-Making
Overview of MSD's current use of ADM and recommended next steps in the ADM work programme

Paper 2: Automated Decision-Making Legislative Enabling Framework

Seeks your agreement to policy decisions relating to an enabling provision for the use of ADM.

Paper 3: Safeguards for the Ministry of Social Development's Use of Automated Decision-Making

Seeks your agreement to policy decisions on safeguarding the use of ADM, subject to paper 2 decisions.

- 2 This report sets out the proposed legislative enabling framework for ADM. It seeks agreement to introduce a general authorising provision to include legislative authority for MSD using ADM to administer the welfare system.

Executive Summary

This section contains legal advice at paragraphs 4-5 and 7 and is legally privileged.

- 3 MSD currently uses ADM in 33 processes to deliver support and services to our clients. The ability to keep using ADM is essential for MSD so that we can continue to provide modern and efficient services to our clients and support the delivery of your priorities for the welfare system (Paper 1, REP/24/3/257, refers).

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s9(2)(h)

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- 6 A broad authorising provision would include decisions made under legislation other than the Social Security Act 2018 (SSA), and decisions made under non-legislative authority. For example, our administration of Veteran's Pension under the Veterans' Support Act 2014, and our employment functions under the Employment and Work-Readiness Assistance Programme (EWRAP). The recently passed Child Support Pass-on (CSPO) Bill included a similar set of ADM legislative provisions targeted solely to CSPO,

s9(2)(h)

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s9(2)(h)

Recommended actions

This section contains legal advice at recommendation 2 and is legally privileged.

It is recommended that you:

- 1 **agree** to enact a general authorising provision for the use of Automated Decision-Making (ADM) that will:
 - provide clear legislative authority in the Social Security Act 2018 authorising the use of ADM across the Ministry of Social Development's (MSD) portfolio responsibilities, whether under other legislation (primary or secondary) or other sources of authority
 - incorporate appropriate safeguards (subject to your agreement in Paper 3, REP/24/3/259).

AGREE/DISAGREE

- 2 **note** that MSD has sought legal advice from the Crown Law Office on options for ensuring an authorising provision could authorise the use of ADM across MSD's portfolio responsibilities
- 3 **note** that from 1 July 2023, we have a limited ADM authorising provision under Child Support Pass-on (CSPO) legislation
- 4 **agree** to seek Cabinet agreement to give effect to Recommendation 1 through the Te Pae Tawhiti Modernisation Amendment Bill

AGREE/DISAGREE

Simon MacPherson
Deputy Chief Executive, Policy

Date

Hon Louise Upston
Minister for Social Development and
Employment

Date

We need clear legislative authority to reduce the overall legal risk of using automated decision-making

This section contains legal advice at paragraphs 9-13 and is legally privileged.

- 8 The Ministry of Social Development (MSD) currently uses automated decision-making (ADM) in 33 processes to deliver support and services to our clients. The use of ADM can be beneficial for clients and staff. The ability to keep using ADM is essential for MSD so that we can continue to provide modern and efficient services to our clients and support the delivery of your priorities for the welfare system (Paper 1 refers).

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s9(2)(h)

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s9(2)(h)

13

We have had discussions with CLO and PCO about an authorising provision

This section contains legal advice at paragraphs 14-15 and 17 and is legally privileged.

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s9(2)(h)

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¹ Sections 363A-D

- 16 MSD's preferred option is a broad-based authorisation in the SSA, authorising the use of ADM across MSD's portfolio responsibilities, whether under other legislation (primary or secondary) or other sources of authority, accompanied by appropriate safeguards. For example, our administration of Veteran's Pension under the Veterans' Support Act 2014, and our employment functions under the Employment and Work-Readiness Assistance Programme (EWRAP).

17 s9(2)(h)

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s9(2)(h)

We note that an all-of-government act to enable the Public Sector's use of ADM is unlikely in the near future.

We recommend seeking Cabinet agreement on the authorising provision in August 2024

This section contains legal advice at paragraph 20 and is legally privileged.

- 19 You would need to seek Cabinet agreement to introduce a general authorising provision, and associated safeguards, generally enabling the use of ADM across MSD's portfolio responsibilities. We are aiming to achieve this through the Te Pae Tawhiti Modernisation Amendment Bill which will seek Cabinet decisions in August 2024.

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s9(2)(h)

Next steps

- 21 Subject to your agreement, we will undergo further work and provide you with a draft Cabinet paper before consultation begins.

File ref: REP/24/3/258

Author: Isobel Cassidy-Rowse, Policy Analyst, Welfare System Policy

Responsible manager: Leah Asmus, Policy Manager, Welfare System Policy

Report



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Date: 14 December 2023

**Security
Level:**

IN CONFIDENCE

To: Hon Louise Upston, Minister for Social Development and
Employment

**This report contains legal advice and is legally privileged. It
should not be disclosed without further legal advice.**

Automated decision-making

Key messages

- The Ministry of Social Development (MSD) uses automation and automated decision-making (ADM) in the welfare system to deliver efficient services and support to our clients.
- Automation and ADM can support the efficient implementation of your and the Government's key priorities for the welfare system.
- The continued ability to use automation and ADM is critical for MSD's current service delivery and future systems, so that we can continue to deliver improved client outcomes.
- We have taken steps to support the appropriate use of ADM, but further work is required to continue strengthening MSD's position in its use of ADM.
- We are working to address these issues and will provide you with further advice in early 2024.

Purpose of the report

- 1 This report provides you with an overview of MSD's use of ADM, including why ADM is essential for delivering efficient services to clients and for supporting your priorities, our work to date on supporting appropriate use of ADM, and next steps.

Executive summary

- 2 Many government agencies in New Zealand currently use automation and ADM for delivering timely and modern services at scale. Automation and ADM are also being used widely by public agencies across international jurisdictions. For example, the United Kingdom's Department for Work and Pensions has introduced increased automation to clear non-complex work which has freed up staff to tackle more complicated cases.
- 3 MSD uses automation and ADM in many processes in the welfare system to improve the efficiency and consistency of decision-making, and to provide more responsive and timely assistance to clients.
 - Automation is where electronic systems replace repeatable processes to reduce dependency on manual activities.
 - ADM occurs when a decision is made within an automated process with no substantial human involvement in making the decision.
- 4 The ability to use automation and ADM means that we can process rules-based transactions more efficiently. This can create positive outcomes for clients through timely delivery of support. It also responds to public expectations around self-service through digitisation of government services.
- 5 We expect that automation and ADM will help us to better implement your and the Government's priorities for the welfare system. This includes supporting better employment outcomes for clients. For example, by automatically processing low-value, rules-based transactions, we can free up staff time so that they can instead focus on providing tailored employment support to those who need extra help to find or prepare for work. In the past, ADM has supported us to implement key priorities of previous governments, such as through the implementation of the Child Support Pass-On changes, for which a targeted ADM enabling provision was introduced in legislation.
- 6 ADM is critical for implementing both our current delivery of services and for the foundations for MSD's future systems under the Te Pae Tawhiti transformation programme as it can ease administrative burdens for clients and staff.
- 7 While ADM has a range of benefits, there are some inherent risks if it is not implemented rigorously. Over the previous year, MSD has taken steps to support the appropriate use of ADM. For example, this has included developing and gazetting an ADM Standard that contains comprehensive safeguards.

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ss9(2)(f)(iv), 9(2)(h)


- 9 We are available to discuss the contents of this report with you, and to provide you with additional information as needed. We will report back to you with advice in early 2024 on opportunities for further strengthening MSD's position in its use of ADM.

Recommended actions


It is recommended that you:

- 1 **agree** to discuss the contents of this report with officials
- 2 **note** that we will report back to you in 2024 with advice on opportunities to further strengthen the Ministry of Social Development's position in its use of automated decision-making.

AGREE / DISAGREE


Simon MacPherson
Deputy Chief Executive, Policy

14 / 12 / 23
Date


Hon Louise Upston
Minister for Social Development and
Employment

2023/2/7
Date

Automated decision-making (ADM) is essential for the current and future service delivery of the Ministry of Social Development (MSD)

MSD already uses automation and ADM for delivering services and support in the welfare system...

- 10 Many government agencies in New Zealand currently use automation and ADM for delivering timely and modern services at scale, and some of these, such as Inland Revenue and the New Zealand Customs Service, have the legislative authority to use ADM. Automation is also being used widely by public agencies across international jurisdictions. For example, the United Kingdom's Department for Work and Pensions has introduced increased automation to clear non-complex work which has freed up their staff to tackle more complicated cases.
- 11 MSD currently uses automation and ADM for delivering a range of services and support in the welfare system. This helps us provide timely and more responsive support to our clients for those types of assistance and improves the efficiency and consistency of decision-making in the welfare system.
- 12 Automation is the use of electronic systems to replace repeatable processes to reduce dependency on manual actions or interventions. ADM occurs when the electronic system makes a decision within an automated process where there is no substantial human involvement in making that decision. Thus, automating parts of a *process* is different to automating a *decision* within the automated process.
- 13 An example of a process that uses ADM is the granting of the Winter Energy Payment (WEP), which helps people with their household heating costs during the winter period. As at June 2022, MSD's systems automatically made the decision to grant WEP to over 858,000 recipients by following rules-based eligibility criteria. To process all WEP grants manually, MSD would have required approximately 600 full-time equivalent staff per day. This estimate assumes that MSD would have an eight-week processing window for granting WEP.
- 14 We have undertaken a significant amount of foundational work to strengthen our position for using ADM. This includes introducing a targeted legislative authority in the Social Security Act 2018 to enable MSD to approve the use of ADM for certain child support payments. This work was done in consultation with external stakeholders, including with the Office of the Privacy Commissioner.

... and expanding our use of ADM will help us provide modern, efficient services to clients, and deliver on your priorities

- 15 The ability to keep using ADM is essential for MSD so that we can continue to provide modern and efficient services to our clients, and support the delivery of your priorities for the welfare system.
- 16 **ADM can provide timely and accessible support to clients.** MSD's appropriate use of ADM for different forms of assistance can improve the accessibility and timeliness of the support clients receive from us. The ability to apply online means that they do not always need to visit a Service Centre within standard office hours for those types of assistance. This can remove a key barrier to access for clients, especially for those who are on shift work and those with dependent children. Automatic granting of certain types of assistance means that clients can receive support more quickly in those cases.
- 17 **ADM can support efficient implementation of Government priorities.** As part of our early work on preparing to implement your priorities, we are working to explore how automation and ADM can help us design and deliver new processes effectively. For example, exploring opportunities to automate some processes relating to obligations and sanctions and benefit re-applications can free up staff time so that they can focus on supporting better employment outcomes for clients.
- 18 **Responding to public expectations around service access.** Besides improving accessibility, using ADM also responds to client demands for self-service. This aligns with public expectations around the digitisation of government services, including around how they interact with and receive services amid rapid technological advancements.
- 19 **ADM can create efficiency gains for MSD and our staff.** Automating decisions where appropriate means that MSD's systems can process low-value, high-volume rules-based transactions without substantial human involvement. This can create efficiency gains for MSD where frontline staff do not have to complete repetitive, manual processing of rules-based transactions. This is illustrated through the Winter Energy Payment example in paragraph 13. With their time freed up, staff can instead focus on providing one-to-one employment support and holding other important conversations with clients. This can also support staff to proactively engage with clients to help them understand and meet their expectations.
- 20 **ADM is critical for MSD's future systems.** ADM is critical for implementing the foundations for MSD's future systems as part of the multi-year Te Pae Tawhiti transformation programme. It can ease administrative burden for clients and staff, creating time and space for staff to support those with more complex needs. A priority of Horizon One (2023–2026) of the transformation programme is to establish a new service experience platform to improve the support provided to students, and ADM will be a key enabler for implementing

this. ADM can also support some kinds of channel choice where appropriate, and may be able, with the right safeguards, to be expanded to support the efficient allocation of clients to the right level of case management and employment services in the future. For example, this could include the potential use of statistical models to match clients with case management services that are most likely to work best for them.

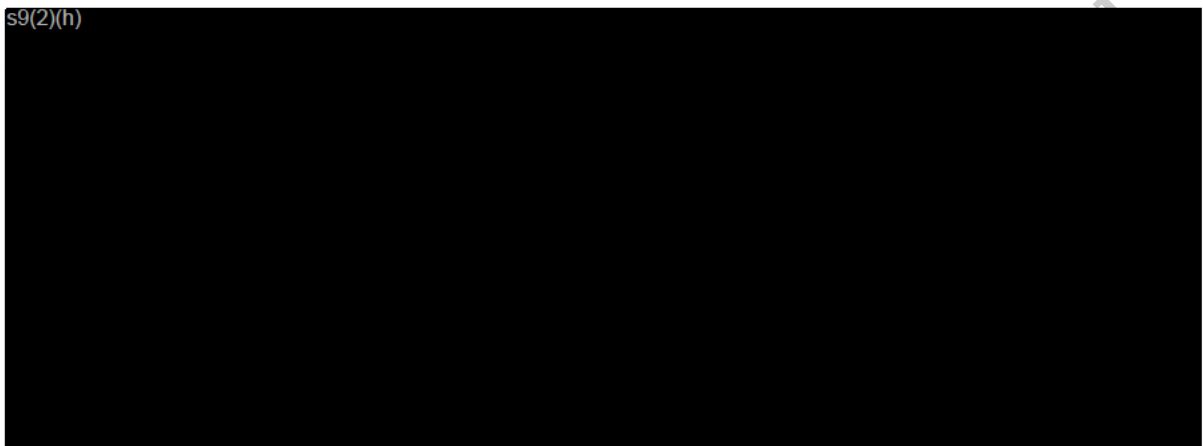
We have made progress on ensuring appropriate safeguards are in place

- 21 Notwithstanding the benefits of ADM, there are some inherent risks if ADM is not implemented rigorously. We particularly note the example of the failed Robodebt Scheme in Australia which involved the use of automated welfare debt assessment and recovery. While the way we use ADM is very different to how it was used in the Robodebt Scheme, we have been and will continue to be mindful of not repeating the mistakes that were made in that context.
- 22 ADM processes, when implemented poorly, have the potential to amplify harm for Māori communities. This is due to the social conditions which mean that Māori are disproportionately represented in some risk groups, and in the welfare system in general, and the ability of ADM to make decisions at scale that are inaccurate or contain unintended bias or discrimination across client cohorts. We have already taken steps to ensure that appropriate safeguards are in place for MSD's use of ADM.
- 23 We have developed and gazetted the ADM Standard (Appendix 1) to provide comprehensive safeguards for our use of ADM, which outlines transparency, human oversight, compliance, and assurance considerations. The Standard incorporates key principles from the Algorithm Charter for Aotearoa New Zealand, the Data Protection and Use Policy, and the Principles for the Safe and Effective Use of Data and Analytics. It is designed to help mitigate some of the ADM-related risks, including those for Māori communities as outlined in paragraph 22. We believe we are the only government agency in New Zealand with a Standard of this nature. We are beginning internal assurance of existing ADM processes against the ADM Standard.
- 24 We are also working on providing advice to strengthen the existing governance and transparency settings of MSD's use of ADM. This relates to MSD creating, following, and monitoring its own rules in the absence of an all-of-government approach to the use of ADM by government agencies in New Zealand.

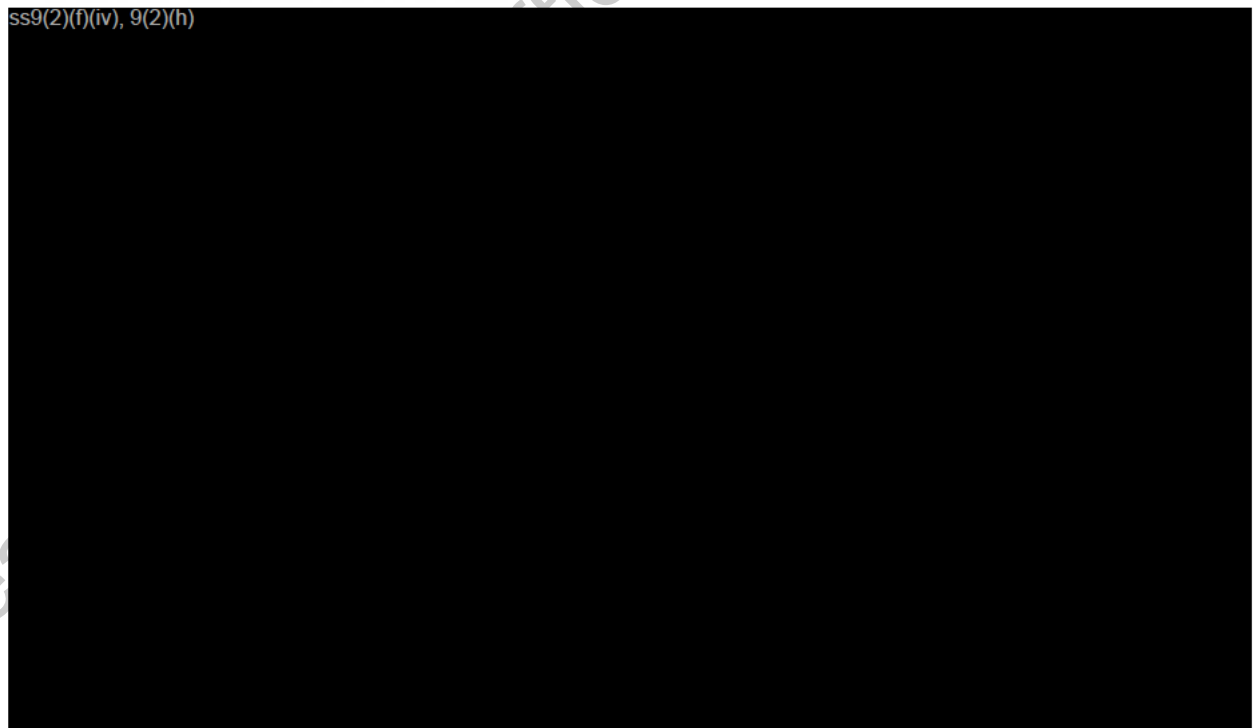
Further work is required to continue strengthening MSD's position in its use of ADM


This section contains legal advice and is legally privileged.

- 25 In light of ADM's criticality for MSD and for our clients, further work is required to continue strengthening MSD's position in its use of ADM. We propose to provide you with advice in early 2024 on opportunities for doing this, and for ensuring that appropriate safeguards continue to remain in place.

26  s9(2)(h)

- 27 Over the past year, we launched a work programme aimed at ensuring that our use of ADM is appropriate. Some of our work completed to date and ongoing work includes the following:

 ss9(2)(f)(iv), 9(2)(h)

 ss9(2)(f)(iv), 9(2)(h) expanded use of ADM, which is a key assumption of the Te Pae Tawhiti transformation programme. As noted earlier, a targeted ADM enabling provision came into effect in July 2023 to enable MSD to approve the targeted use of ADM limited to certain child support payments, subject to the use of the

ADM system being consistent with the approved ADM Standard. The existing ADM enabling provision targeted to Child Support Pass-On could potentially be expanded to apply to all current and future ADM.

- s9(2)(f)(iv)



Next steps

28 We are available to discuss the contents of this report and would welcome the opportunity to discuss this work programme with you ahead of providing further advice. We propose to report back to you in 2024 with advice on:

- expanding the legislative authority
- s9(2)(h)
- strengthening the governance and transparency settings of MSD's use of ADM
- s9(2)(f)(iv)

Appendices

Appendix 1: ADM Standard

Appendix 2: s9(2)(h)

Note: Appendix 2 contains legal advice and is legally privileged.

File ref: REP/23/12/958

Author: Neha Pant, Policy Analyst, Welfare System

Responsible Manager: Leah Asmus, Policy Manager, Welfare System

Automated Decision Making Standard

| | |
|-----------------|-----------------------------|
| Approved by: | Leadership Team |
| Standard Owner: | General Manager Information |
| Review date: | 1 March 2025 |

1 Definitions

- 1.1. **Automation** is the use of systems or components of systems to replace repeatable processes in order to reduce dependency on manual actions or interventions.
- 1.2. Processes can be automated based on the application of:
 - (i) known business rules, and/or
 - (ii) data-based algorithms without involvement or assessment by a human, including statistically or analytically derived patterns in machine learning or Artificial Intelligence.
- 1.3. A **decision** for the purpose of this standard is the action of choosing between two or more possible actions and may be derived from legislative, cabinet or other legal authority or can be operational, and may be discretionary or non-discretionary.
- 1.4. An **automated decision** for the purpose of this standard is a decision within an automated process where there is no substantial human involvement in making the decision.
- 1.5. **Discretionary decisions** require an exercise of judgment to choose between two or more possible actions.
- 1.6. A non-discretionary decision **does not** require any exercise of judgement to determine the appropriate action.
- 1.7. A **Business Owner** is the person who is accountable for the automated process at any given time.
- 1.8. For the purposes of this standard, "**bias**" refers to the tendency of an automated decision process to create unfair and unjustified outcomes, such as favouring or disfavouring one group over others.
- 1.9. Automated decisions may be biased because, for instance, the **datasets** they rely on are biased, potentially as a result of how data was collected in the past, or because **social conditions** mean that some groups are overrepresented in some risk groups.
- 1.10. The prohibited grounds of discrimination are set out in the **Human Rights Act 1993 Section 21**: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.
- 1.11. Discrimination on these grounds can be justified under the **Bill of Rights Act 1990 Section 5**, but only to such reasonable limits that are lawful and can be clearly and ethically justified.

2 Applicability

- 2.1 This standard **must** be applied using the operational guidance when:
- (i) there is a proposal to automate a decision (as defined in sections 1.3 and 1.4), **AND**
 - (ii) the automated decision has the **potential to affect**, an individual's entitlement, obligations, or eligibility status for support delivered or funded by the Ministry of Social Development (the Ministry).
- 2.2 Where a complex algorithm is being proposed, the Model Development Lifecycle **must** be used.
- 2.3 Any exception to this standard **must** be approved by the Chief Executive before automated decision-making can be implemented.

3 Standard Requirements

3.1 General

- 3.1.1 Automated decision-making **must**:
- (i) improve efficiencies and effectiveness of decision making and balance factors such as cost, accuracy, reliability and safeguarding the wellbeing of those affected.
 - (ii) comply with all applicable Ministry policies and standards that relate to the privacy, security and management of information.
- 3.1.2 Automated decision-making **must not** create inefficiencies for those the decisions directly affect, for example, creating manual workarounds for a client to enable automation, or unnecessarily increasing time from application to notification of a decision than would otherwise occur if it was manually completed.
- 3.1.3 There **must** be clear, relevant, and accessible guidance for users who are required to input or provide data to be used in automated decision-making, for example, a service user entering their information in MyMSD.

3.2 Accuracy, bias and discrimination

- 3.2.1 Accuracy and reliability **must** be assessed before automated decision-making is implemented to ensure, insofar as possible, that automated decision-making is producing expected results, that automated decisions do not deny clients full and correct entitlement (FACE), and bias and discrimination is well managed.
- 3.2.2 Based on the assessment carried out under 3.2.1, where evidence suggests that automated decision-making has resulted in unintended bias, steps **must** be taken to identify and remove or mitigate the unintended bias, and any residual risk **must** be accepted by the Business Owner.
- 3.2.3 Where unintended bias cannot be removed or sufficiently mitigated, substantial human involvement **must** be included in the process. This would then mean that the decision is no longer an automated decision.

3.3 Policy, fraud and legal considerations

- 3.3.1 Automated decisions **must** be lawful and align with policy intent.
- 3.3.2 An assessment **must** be undertaken to determine whether any proposed automated decision-making has the potential to:

- (i) Increase (or decrease) the likelihood that people will commit internal or external fraud or client non-compliance; or
- (ii) increase (or decrease) the scale or size of potential internal or external fraud or client non-compliance.

3.3.3 Any increased risk of fraud **must** be accepted by the Business Owner before automated decision-making can be implemented.

3.3.4 Prior to automating discretionary decisions, you **must** ensure that any legal risk(s) are identified and mitigated or accepted by the Business Owner before automated decision-making can be implemented.

3.4 Transparency

3.4.1 The Ministry **must** make information publicly available about:

- (i) what policies and processes are used to identify and mitigate risks associated with automated decision-making, in particular those that relate to human rights and ethics; and
- (ii) what decisions are made using automated decision-making as soon as reasonably practicable after they have been:
 - a. identified;
 - b. assessed against the Standard; and
 - c. approved by the Business Owner and the Standard Owner.

3.4.2 The Ministry **must** provide as much transparency as possible, while minimising the risk of fraud, to clearly explain how a decision has been made through the use of automation, including the role of humans in automating the decision and who is accountable for the process and the decision made.

3.4.3 If a lawful restriction prevents explanation, the Ministry **must** provide as much explanation as possible to the individual and clearly outline what details have been withheld and why.

3.4.4 The use of automated decision-making **must** be communicated to the individual in a way that is easy to understand and clearly shows a decision was made using automation, the outcome of that decision, and the process for challenging or appealing decisions.

3.5 Human oversight

3.5.1 A visible and accessible point of contact **must** be nominated for public inquiries about decisions made using automation.

3.5.2 The Ministry **must** provide a channel for challenging or appealing decisions made using automation and this channel **must** be made easily visible and accessible to the individual(s) impacted by the decision.

3.5.3 The process to review an automated decision that has been challenged or appealed **must not** itself be an automated process.

3.6 Compliance and assurance

3.6.1 Compliance with this standard **must** be verified for all new uses of automated decision-making through the existing Security, Privacy, Human Rights and Ethics Certification and Accreditation process.

- making that is approved under this standard continues to meet the requirements of the standard.
- ## 4 References
- 4.1.1 Principal tools and policies used as inputs in the development of this Standard.
- [Principles for Safe and Effective Use of Data and Analytics](#)
- [Algorithm Charter for Aotearoa New Zealand](#)
- [Data Protection and Use Policy](#)
- 4.1.2 Tools that directly support the application of this Standard.
- [Operational Guidance](#)
- [Data Model Lifecycle](#)
- [PHRaE guidance: Operational analytics and automation](#)

4.1.1 Principal tools and policies used as inputs in the development of this Standard.

Algorithm Charter for Aotearoa New Zealand

Data Protection and Use Policy

- #### 4.1.2 Tools that directly support the application of this Standard.

Operational Guidance

Data Model Lifecycle

PHRaE guidance: Operational analytics and automation

Appendix 2

IN CONFIDENCE, CONTAINS LEGAL ADVICE AND IS LEGALLY PRIVILEGED

s9(2)(h)

Released under the Official Information Act 1982

s9(2)(h)



Released under the Official Information Act 1982

s9(2)(h)



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s9(2)(h)



Released under the Official Information Act 1982

Report



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Date: 1 November 2024 **Security Level:** In Confidence
To: Hon Louise Upston, Minister for Social Development and
Employment
File Reference: REP/24/10/1009

Shaping MSD's work programme

Purpose of the report

- 1 To support your priorities for change across the welfare system, this report includes information for discussion at this week's Ministry of Social Development (MSD) Officials meeting (for week starting 4 November 2024) on:

- a view of MSD's front-line activity, Case Management capacity and investment across key benefit types/cohorts (Appendix 1)

- s9(2)(f)(iv)

Context

- 2 The Ministry is focused on delivering on your priorities including towards the Jobseeker Support reduction target, Emergency Housing target and other government targets and priorities. We want to show you what this looks like in terms of activation of those on benefit, and the effort occurring at the front-line to enable this.
- 3 Between February and 1 October 2024, we have increased activity at the front-line by implementing the following:
 - Kōrero Mahi - Let's Talk Work (for those new to benefit on Jobseeker Support – Work Ready) – 19 February
 - Flexi-Wage and Mana in Mahi changes to target more Jobseeker Support clients – February

- Priority One category for families with children in emergency housing – 30 April
- Kōrero Mahi - Work Check-ins (26-week check-ins) – 24 June
- Case Manager refresh to adjust caseloads – 1 July
- Housing Support Products extending to some arrangements not covered by the Residential Tenancies Act 1986 – 1 July
- Traffic Light System Phase One – 12 August
- The new Emergency Housing Grant Welfare Programme – 26 August
- Kōrero Mahi - Into Work (for Jobseeker Support – Health Condition and Disability with part-time obligations) – 30 September
- Welfare that works Phase One (Community Coaches for 2,100 Jobseeker Support youth places) – 1 October.

4 In recent weeks the Ministry has provided you with advice on a number of issues ^{s9(2)(f)(iv)} [REDACTED] and have stated that trade-offs will need to be made to progress work. This is reflective of MSD's overall capacity to deliver additional change.

5 You will also be taking key decisions in the coming months around the Employment Investment Strategy, and Budget 2025 ^{s9(2)(f)(iv)} [REDACTED]. There are also some decisions from other portfolios that could create additional pressure. This includes your other portfolios (Disability Issues and Child Poverty), and those of other Ministers.

Opportunities in the short, medium, and longer-term

6 You have shown interest across the main settings of the welfare system ^{s9(2)(f)(iv)} [REDACTED]. These go beyond the Jobseeker Support reduction target and towards other targets (e.g. Child Poverty Reduction) and other goals ^{s9(2)(f)(iv)} [REDACTED].

7 ^{s9(2)(f)(iv)} [REDACTED] This would support you to deliver on expectations from the Prime Minister/other Ministers alongside giving MSD clarity on focus of delivery.

8 Starting from a view of front-line capacity, we want to discuss with you the choices and opportunities you have in the short, medium, and longer-term ^{s9(2)(f)(iv)} [REDACTED].

We have reached capacity in Case Management services in the short term (until 31 December 2025)

9 Overall, our view is that front-line capacity is oversubscribed. We have managed to increase throughput for reactive and proactive appointments, while meeting performance measures (e.g. wait times for an available appointment). Activity that is surplus to our capacity is being managed because there are some clients not showing up for appointments. However, this demand still has an impact (for example, managing sanctions).

10 As seen in Appendix 1, front-line activity and investment is predominantly oriented towards Jobseeker Support – Work Ready (JS-WR), and there is limited activation and investment towards Jobseeker Support – Health Conditions and Disability (JS-HCD).

11 s9(2)(f)(iv)

12 While economic conditions remain as they are, and with capacity at its peak we recommend no further pivoting from current settings.

s9(2)(f)(iv)

13 While primary investment has been targeted for those on JS-WR, MSD has managed to expand the limited service offerings for clients who are on JS-HCD. Through initiatives such as the phone-based Case Management expansion; regional investment for JS-HCD contracts; Kōrero Mahi – Into Work seminars and recent Ministerial initiatives such as Approved Doctors Phase One, will begin to improve proactive engagement with this cohort.

14 The rate of transfers from JS-WR to JS-HCD have recently been persistently above average. At this point we do not know enough about the factors influencing this, including whether clients feel pulled to make this shift (e.g. due to increased activation, heightened focus on obligations or other factors), or whether there are push factors (e.g. encouraged to get a Medical Certificate to meet benefit obligations when cannot work full-time).

15 We have practice guidelines for JS-WR clients who indicate that have a health condition or disability (and cannot meet full-time work obligations). Despite this, we have early indications from staff that there are other drivers for the increase from JS-WR to JS-HCD. For example:

- increased engagement with clients (e.g. since Traffic Light System Phase One) some people are not on the correct benefit and transferring to JS-HCD is the correct decision

- interpretation following engagement with MSD about next steps – which may result in the perception that a path to take is to seek a medical certificate.

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s9(2)(f)(iv)

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There are limited ways to increase engagement with people on other benefit types in the short term

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s9(2)(f)(iv)

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s9(2)(f)(iv)

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s9(2)(f)(iv)

- 22 If both capacity at the front-line and funding for change remains the key constraint, we will need to use other levers in the system to affect change, or look to wider labour market levers.

s9(2)(f)(iv)

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s9(2)(f)(iv)

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s9(2)(f)(iv)

s9(2)(f)(iv)

25 s9(2)(f)(iv)

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There is an emerging list of advice we need to sequence

27 You have asked for, or recently received advice in a number of areas.

s9(2)(f)(iv)

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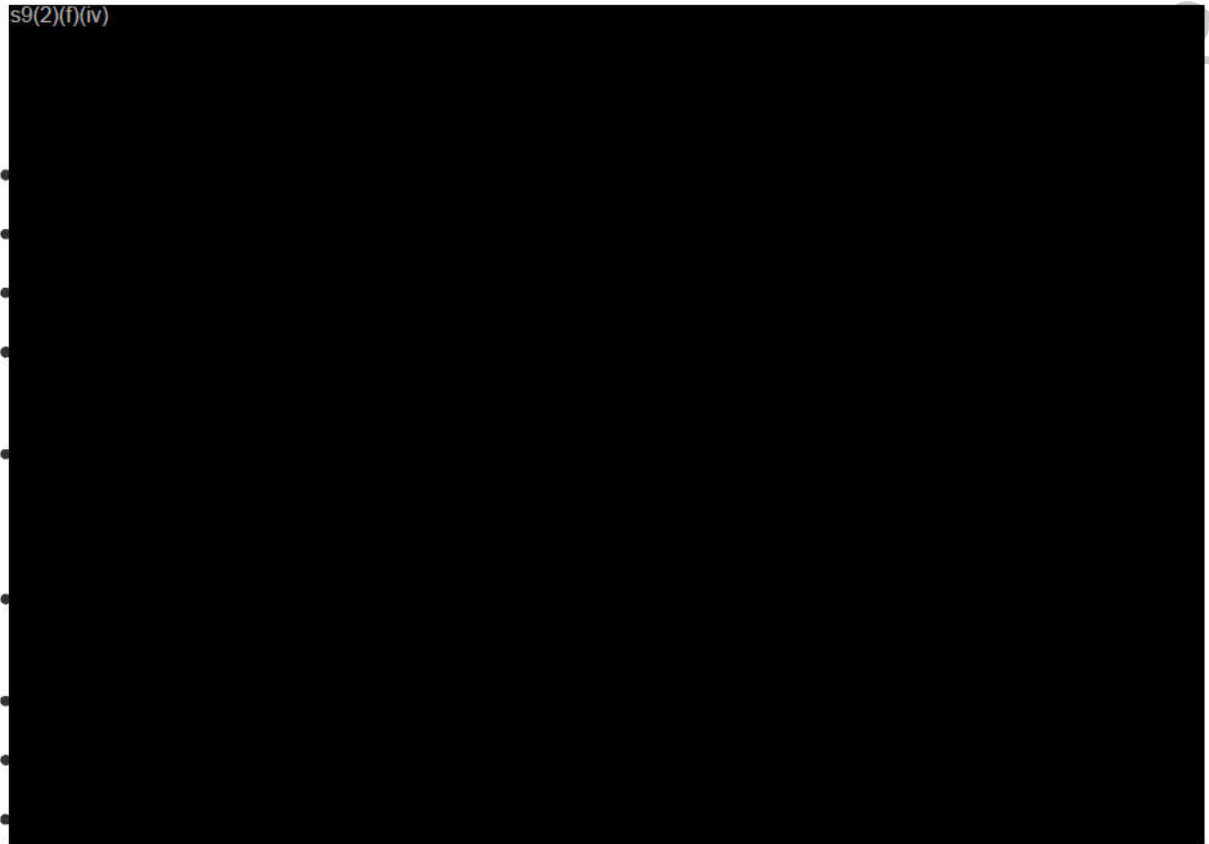
28 There are also a range of other things in train including:

- Labour Market Ministers Work Programme/Employment Action Plan
- Disability Support Services Taskforce
- Implementation of Budget 2024 initiative to count the contribution from boarders when assessing eligibility for housing subsidies
- Strengthening the Oversight of the Oranga Tamariki System

- Government response to Royal Commission of Inquiry into Historical Abuse in State Care
- Emergency Management – including the future of Temporary Accommodation Assistance, and the welfare function in emergencies.

29

s9(2)(f)(iv)



30 Given the capacity constraints for the front-line there is no capacity to implement new operational or policy changes, s9(2)(f)(iv)

s9(2)(f)(iv)

For this reason, we need to sequence the development of advice and plans for implementation over the medium-term. This is likely to mean there is a very limited number of issues that we can make meaningful progress on. We are also reaching a point where other constraints will be more challenging to negotiate – for example pressure for drafting, limited house time, and fiscal constraints.

31 In the main we would recommend that changes that would support the Jobseeker Support reduction target or another target could be priorities for the medium term, while others may need to be paused/reconsidered in the longer term s9(2)(f)(iv)

There are other pieces of work that we think will help the system over the medium to longer-term

32 Alongside the items you have asked for there is a short list of work that the Ministry consider are critical to:

- managing risk/keeping the Ministry and others safe s9(2)(f)(iv)
- future efficiency in income support processes s9(2)(f)(iv)

We want to work with you to form this plan

33 We have drawn Appendix 2 together based on our current understanding, and it remains in draft. We want to work with you to form a plan that is ambitious and enables sequencing to impact the areas that are your top priority.

Appendices

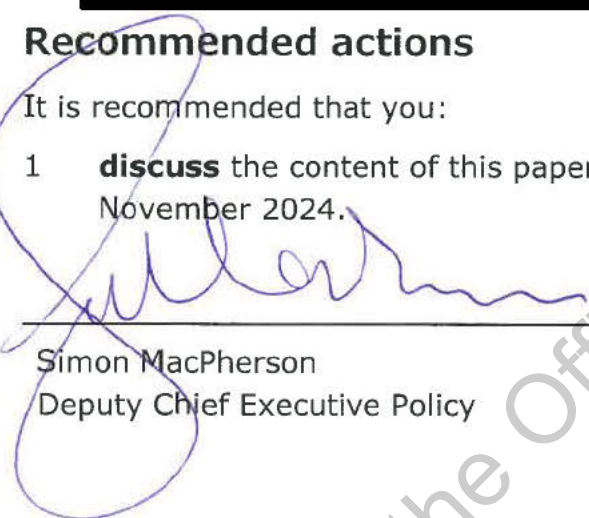
34 Appendix 1: Welfare system current state and capacity.

35 s9(2)(f)(iv)

Recommended actions

It is recommended that you:

- 1 **discuss** the content of this paper and appendices with officials on 4 November 2024.


Simon MacPherson
Deputy Chief Executive Policy

1 / 11 / 24
Date

Hon Louise Upston
Minister for Social Development and
Employment

Date

Report



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Date: 3 April 2024

**Security
Level:**

IN CONFIDENCE

To: Hon Louise Upston, Minister for Social Development and
Employment

**This report contains legal advice and is legally privileged. It
should not be disclosed without further legal advice.**

Safeguards for the Ministry of Social Development's Use of Automated Decision-Making

File ref: REP/24/3/259

Purpose of the report

- 1 This is the third report in a suite of three providing you with advice on the Ministry of Social Development's (MSD) use of automated decision-making (ADM). This is Paper 3: Safeguards for the Ministry of Social Development's Use of Automated Decision-Making.

Paper 1: Overview Paper: Strengthening the Ministry of Social Development's Position in its Use of Automated Decision-Making
Overview of MSD's current use of ADM and recommended next steps in the ADM work programme

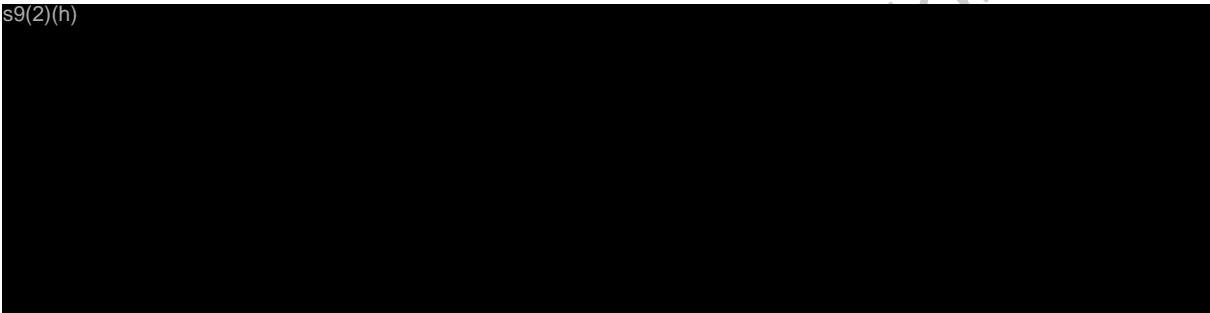
Paper 2: Automated Decision-Making Legislative Enabling Framework
Seeks your agreement to policy decisions relating to an enabling provision for the use of ADM.

Paper 3: Safeguards for the Ministry of Social Development's Use of Automated Decision-Making
Seeks your agreement to policy decisions on safeguarding the use of ADM, subject to Paper 2 decisions.

- 2 This report sets out the safeguards that are in place for MSD's use of ADM and, subject to your decisions in companion Paper 2 [REP/24/3/258 refers], seeks your agreement to seek Cabinet approval to expand the application of the existing safeguarding provisions for MSD's use of ADM beyond their current targeting to child support payments.

Executive summary

This section contains legal advice at paragraphs 5 and 9, and at recommendation 5 and is legally privileged.

- 3 MSD uses automation and ADM in some processes in the welfare system to improve the efficiency of decision-making and to provide timely assistance to our clients. It is critical for us to have appropriate safeguards in place to support the safe use of ADM by MSD, and to protect the interests and wellbeing of our clients who are affected by automated decisions.
- 4 We have introduced an ADM Standard (the Standard) which contains safeguards across a range of areas that must be met when there is a proposal to automate a decision at MSD. Our Standard is designed to help mitigate risks already seen internationally when ADM is poorly implemented.
- 5  s9(2)(h)
- 6 We have had constructive engagement with the Office of the Privacy Commissioner since the time of developing the Standard, and from 1 July 2023, we are statutorily required to consult with the Privacy Commissioner when developing or amending the Standard. We intend to consult with them further on a proposed minor amendment to the Standard to reflect your feedback from December 2023 [REP/23/12/958 refers] and any other changes that may be proposed during further work.
- 7 From 1 July 2023, as part of the Child Support Pass-On changes, our use of ADM in respect of child support payments became subject to legislative safeguards, including the requirement for MSD to have a Standard and to comply with it. The safeguarding provisions currently apply by legislation solely to MSD's use of ADM for child support payments. Our view is that ADM should only be used when appropriate safeguards are in place. Therefore, subject to your decisions in Paper 2, we seek your agreement to seek Cabinet approval to expand the application of the existing safeguarding provisions beyond their current targeting to child support payments to cover other uses of ADM within MSD.
- 8 We considered whether our existing safeguards could be strengthened by other options but found that they appropriately balance the efficiency and effectiveness of ADM while maintaining the flexibility to adapt to rapidly emerging technological changes, although consultation feedback from some agencies noted preference for alternative options.

9

s9(2)(h)

- 10 We recognise the importance of an all-of-government approach to the use of ADM in New Zealand. While we do not have a mandate to lead work on a cross-government approach, we are committed to actively supporting any work in this space.

Recommended actions

It is recommended that you:

- 1 **note** that the Ministry of Social Development's (MSD) use of automated decision-making (ADM) is governed by our ADM Standard (the Standard) which provides a range of safeguards to support the safe use of ADM by MSD, and to protect the interests and wellbeing of our clients
- 2 **note** that we have had engagement with the Office of the Privacy Commissioner in the past and intend to consult with them further on a proposed minor amendment to the Standard to reflect your feedback from December 2023 and any other changes that may be proposed during further work
- 3 **note** that from 1 July 2023, our use of ADM for child support payments became subject to legislative safeguards, including the requirement for us to have a Standard and to comply with it
- 4 **agree**, subject to your decisions in Paper 2 [REP/24/3/258 refers], to seek Cabinet approval to expand the application of the existing safeguarding provisions beyond their current targeting to child support payments

AGREE / DISAGREE

5 s9(2)(h)

Simon MacPherson
Deputy Chief Executive, Policy

Date

Hon Louise Upston
Minister for Social Development and
Employment

Date

It is critical for us to have safeguards for the Ministry of Social Development's use of automated decision-making

- 11 As noted in Paper 1 [REP/24/3/257 refers], the Ministry of Social Development (MSD) uses automation and automated decision-making (ADM) in some processes in the welfare system to deliver support to our clients.¹ The use of ADM can improve the efficiency of decision-making and provide timely assistance to our clients.
- 12 It is critical for us to have appropriate measures or safeguards in place to support the safe use of ADM by MSD, and to protect the interests and wellbeing of our clients who are affected by automated decisions. These safeguards will continue to remain critical as our use of ADM is expected to expand under the multi-year Te Pae Tawhiti transformation programme. If not implemented rigorously, ADM can carry the risk of causing harm to clients by automating decisions at scale that contain unintended bias or discrimination. This could result in potential negative impacts on clients, including on those that are disproportionately represented in the welfare system, for example, Māori communities [REP/23/12/958 refers].

We have introduced a Standard with safeguards that must be met when automating decisions

- 13 We have introduced an ADM Standard (the Standard) to govern the development of new processes that use ADM at MSD (Appendix 1). It contains a range of safeguards in the form of requirements that must be met when there is a proposal to automate a decision at MSD, and the automated decision has the potential to affect an individual's entitlement, obligations, or eligibility status for support delivered or funded by MSD. The Standard is designed to help mitigate risks already seen internationally when ADM is poorly implemented.
- 14 We began developing the Standard as internal guidance in 2021, incorporating key principles from the Algorithm Charter for Aotearoa New Zealand, the Principles for the Safe and Effective Use of Data and Analytics, and the Data Protection and Use Policy (which aligns with and is based on te ao Māori values). We consulted on the proposed Standard with New Zealand government agencies, the Office of the Privacy Commissioner (OPC), and with our internal Māori communities' team. The Standard was first approved by MSD's Leadership Team in 2022.

¹ Automation is the use of electronic systems to replace repeatable processes to reduce dependency on manual actions or interventions. If there is a decision, a human is still involved in the decision-making. Automated decision-making (ADM) occurs when the electronic system makes a decision within an automated process where there is no substantial human involvement in making that decision. Thus, automating parts of a *process* is different to automating a *decision* within the automated process. ADM is, technically speaking, a form of Artificial Intelligence (AI). However, it is important to clarify that our current use of ADM does not include generative AI, for example, large language models.

- 15 From 1 July 2023, as part of the Child Support Pass-On changes, we are required by legislation to have an approved Standard for our use of automated electronic systems in respect of child support payments under section 363A(5) of the Social Security Act 2018 (SSA). We are also required to ensure that the use of the system is consistent with the approved Standard (section 363A(4)(c) of the SSA). We have voluntarily chosen to apply the requirements of the Standard to the development of any new processes that use ADM at MSD.

The Standard provides safeguards covering a range of areas including transparency and human oversight

- 16 The Standard requires that we have taken sufficient steps to manage unintended bias or discrimination, are transparent with clients about our use of ADM, and are maintaining human oversight by providing channels for public inquiries or for challenging automated decisions. We will continue to operate multiple channels for client engagement, including through phone calls and face-to-face appointments. This was also recommended by the National Beneficiaries Advocacy Consultative Group during consultation.
- 17 A high-level summary of the safeguards provided by the Standard has been set out in Table 1, and a more detailed table can be found in Appendix 2.

Table 1: Safeguards provided by MSD's ADM Standard

| Area | Safeguards |
|--|---|
| General requirements | ADM must improve efficiencies and effectiveness of decision-making and balance factors such as cost, accuracy, and safeguarding the wellbeing of those affected. |
| Checking accuracy and bias | Accuracy and reliability must be assessed before implementation of ADM. Steps must be taken to identify and manage unintended bias and discrimination. |
| Policy, fraud, and legal considerations | Automated decisions must be lawful and align with policy intent. Impact on fraud and/or client non-compliance must be assessed before implementation. |
| Transparency requirements | The use of ADM must be communicated to individuals in a way that is easy to understand and clearly shows a decision was made using automation. |
| Human oversight requirements (for public inquiries) | A visible point of contact must be nominated for public inquiries about decisions made using automation. |
| Human oversight requirements (for appealing decisions) | MSD must provide a visible and accessible channel for challenging or appealing decisions made using automation. |
| Compliance with the Standard | Compliance with the Standard must be verified for all new uses of ADM through risk assessments (this is done using MSD's Privacy, Human Rights and Ethics framework). Regular monitoring and compliance reviews must be carried out to ensure that the approved ADM continues to meet the requirements of the Standard. |

Our Standard is consistent with key principles from national and international best practice guidelines

This section contains legal advice at paragraphs 19-21 and is legally privileged.

- 18 We are among the first public service agencies in New Zealand to develop a Standard with safeguards of this nature. We are also among the first public service agencies to be subject to legislative obligations to both have a Standard and to approve the use of ADM where the proposed use meets legislative requirements.

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s9(2)(h)

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Development of the Standard itself is subject to safeguards

- 22 From 1 July 2023, as part of the Child Support Pass-On changes, development of the Standard itself became subject to certain safeguarding provisions. For example, we are statutorily required to consult with the Privacy Commissioner when developing or amending the Standard. We have had constructive engagement with the OPC since the time of developing the Standard, and intend to consult with them further on a proposed minor amendment to the Standard to reflect your feedback from December 2023 [REP/23/12/958 refers] and any other changes that may be proposed during further work. The SSA also requires that the Standard must be published on the Gazette and on our website to ensure public transparency about our use of ADM for child support payments.
- 23 A high-level summary of these safeguards has been set out in Table 2, and a more detailed table can be found in Appendix 2.

Table 2: Safeguards for development of MSD's ADM Standard

| Area | Safeguards |
|--------------------------|---|
| Approval of the Standard | The Standard, and any changes to it, are approved by MSD's Leadership Team. MSD must consult with the Privacy Commissioner on the Standard as part of the approval process. |
| Review of the Standard | The Standard must be reviewed at least once every three years. |
| Publication requirements | The Standard must be published in the Gazette and on MSD's website. |
| Relation to legislation | Primary legislation requires MSD to have a Standard and to ensure that MSD's use of ADM in respect of child support payments is consistent with the Standard. |

There are additional legislative safeguards for our use of automated decision-making

- 24 From 1 July 2023, MSD's use of ADM for child support payments became subject to additional legislative safeguards. For example, there is a requirement that MSD may approve the use of ADM only if the automated electronic system remains under departmental control. A summary of these legislative safeguards has been set out in Table 3, and a more detailed table can be found in Appendix 2.

Table 3: Additional legislative safeguards for MSD's use of ADM

| Area | Safeguards |
|------------------------------------|---|
| Reliability requirements | MSD may approve the use of ADM only if it is satisfied that the system is under the department's control, and that the system has the capacity to make the decision with reasonable reliability. Meeting the reliability requirement necessarily involves assurance and testing for accuracy. |
| Human alternative available | One or more persons must always be available as an alternative to automated electronic systems to make the decision. |
| Substitution of automated decision | MSD staff may substitute an automated decision with a new decision under the same provision if it is more favourable to the affected person. |
| Review rights remain unaffected | Clients' rights of review or appeal against an automated decision continue as they would have if the decision were made by a person. |

- 25 Other general legal protections and accountability mechanisms also continue to apply to MSD's use of ADM, including under the Privacy Act 2020, the Human Rights Act 1993, and the New Zealand Bill of Rights Act 1990.

We considered whether our existing safeguards could be strengthened

- 26 We considered whether our existing safeguards could be strengthened by other options and assessed them against criteria such as flexibility to respond to emergent changes, time and legislative changes required to implement, administrative feasibility, and cost and compliance burden.
- 27 **ADM processes listed in legislation:** To provide public transparency, the ADM Standard is currently gazetted as well as published on MSD's website. In addition to this, the Standard requires MSD to communicate information about the use of ADM to individuals affected by that use. We considered whether listing every ADM process in either primary or secondary legislation would lead to increased transparency. We assessed that any such measure would not substantively increase transparency beyond the current publication requirements and would require legislative mechanisms to add, amend, or remove processes from the statutory list. Adding, amending, or removing approved processes from legislation would be bureaucratically burdensome, and it will only become increasingly more burdensome over time as our use of ADM expands under the Te Pae Tawhiti transformation programme. We concluded that this option could create significant barriers to some uses of ADM, particularly in an operational context.

- 28 **Legislation being more prescriptive:** Legislation currently already prescribes certain core requirements for MSD's use of ADM to operate safely, for example, requirements around reliability, availability of human alternative, avenue for challenging or appealing decisions, and the use of the system being consistent with the approved Standard. We considered whether legislation being more prescriptive about the Standard, for example, by incorporating key principles of the Standard in legislation, would strengthen this area. During consultation on the suite of draft papers, this option was also preferred by the OPC, the Department of Internal Affairs (including the Government Chief Digital Officer function and the Government Chief Privacy Officer), and the Public Service Commission. However, as ADM sits in a rapidly emerging technological space, at this stage, we do not prefer this option because it would reduce the flexibility to adjust to evolving changes to technology and our understanding of ADM at a time when we are developing our level of maturity. Our Standard is designed to be responsive to emergent changes, and to evolve to ensure that any current issues or risks are promptly addressed as they become apparent. s9(2)(f)(iv)

s9(2)(f)(iv)

- 29 **ADM Standard in legislation:** We considered whether having the entire Standard in either primary or secondary legislation would contribute to increased transparency and accountability around MSD's use of ADM. Feedback from the OPC also recommended considering including the entire Standard in secondary legislation. However, we assessed that this option would further reduce any flexibility to make changes to the Standard to promptly respond to emerging technological changes, or to s9(2)(f)(iv)

s9(2)(f)(iv)

The Standard is already available to the public on MSD's website and on the Gazette, incorporating it in legislation would provide no extra benefit to our clients in terms of transparency. We concluded that such a measure would be too prohibitive and would effectively mean that the Standard would no longer remain fit for purpose to respond to any evolving changes or risks associated with the use of ADM. The OPC also suggested developing a statutory accountability mechanism for the Standard, however, we view that to be best considered as part of design for any all-of-government solution.

- 30 **External review:** The Standard requires a compliance review at least once every three years or more frequently (based on the nature and level of risk connected to the process) to ensure that any ADM approved under the Standard continues to meet the requirements of the Standard. This process is currently overseen by MSD's internal teams, and we considered whether conducting an external review of compliance of processes with the Standard would strengthen this area. We assessed that this option would involve the challenge of obtaining sufficiently skilled external resource, significantly high costs and compliance burden, and timing constraints. We concluded that doing so would neither be an efficient use of resources, nor be proportionate as an agency-specific response. We believe such a measure would be more feasible as part of an all-of-government framework including an oversight body with specialist skills and capability to monitor public agencies' use of ADM. In their feedback, the OPC agreed that external review might be more appropriate for a future all-of-government framework for ADM and recommended that client representatives be included in any internal MSD review.

We recommend expanding the application of the existing safeguards to other uses of automated decision-making

This section contains legal advice at paragraph 34 and is legally privileged.

- 31 Ultimately, upon assessing all options, we concluded that our existing safeguards appropriately balance the efficiency and effectiveness of ADM with sufficient transparency, without reducing the flexibility to adapt to rapidly emerging technological changes, prohibiting the use of ADM, or creating a disproportionate compliance burden. Our view is that any additional measures would be better implemented if they applied uniformly as part of a wider all-of-government approach involving all public agencies using similar technological tools for decision-making.
- 32 While we consider that our existing safeguards are appropriate, they currently apply by legislation solely to MSD's use of ADM for child support payments. Our view is that the existing safeguards should apply to other uses of ADM, therefore, subject to your decisions in Paper 2 [REP/24/3/258 refers], we seek your agreement to seek Cabinet approval to expand the application of the existing safeguarding provisions beyond their current targeting to child support payments to cover other uses of ADM within MSD. The OPC were supportive of this proposal.

33 s9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Incorporating a broader requirement in primary legislation for MSD to have and comply with the Standard together with other safeguarding provisions would provide the public with transparency and confidence that MSD is taking appropriate measures to ensure responsible use of ADM.

34 s9(2)(h) [REDACTED]

We support a cross-government approach for the use of automated decision-making

35 The lack of an all-of-government approach including a regulatory framework and an independent body to oversee public agencies' use of ADM has meant that MSD has had to set and monitor our use of ADM against our Standard.

36 Though we do not have a mandate to lead work on a cross-government approach, s9(2)(h) [REDACTED]
s9(2)(h) [REDACTED]

37 Nevertheless, we are committed to actively supporting any ongoing work on a cross-government approach. We have engaged with the Ministry of Business, Innovation and Employment (MBIE) who are leading cross-agency discussions on an all-of-government work programme on Artificial Intelligence (AI). We also note that the Government Chief Digital Officer is progressing the Public Service AI Framework, which would sit alongside the work that MBIE are doing on AI across the wider economy. We will continue to share our work to date to support any all-of-government initiatives on the use of ADM.

Next steps

- 38 We are available to discuss the contents of this report with you, if needed. Subject to your agreement, we will begin work on a draft Cabinet paper for your consideration. We will also look to explore opportunities to engage and collaborate within New Zealand as well as internationally to test our current approach and explore opportunities for improvements.

Appendices

Appendix 1: Automated Decision-Making Standard

Appendix 2: Safeguards for the Ministry of Social Development's use of Automated Decision-Making

Author: Neha Pant, Policy Analyst, Welfare System Policy

Responsible Manager: Leah Asmus, Policy Manager, Welfare System Policy

Appendix 1

Automated Decision-Making Standard

| | |
|-----------------|-----------------------------|
| Approved by: | Leadership Team |
| Standard Owner: | General Manager Information |
| Review date: | 1 March 2025 |

1 Definitions

- 1.1. **Automation** is the use of systems or components of systems to replace repeatable processes in order to reduce dependency on manual actions or interventions.
- 1.2. Processes can be automated based on the application of:
- (i) known business rules, and/or
 - (ii) data-based algorithms without involvement or assessment by a human, including statistically or analytically derived patterns in machine learning or Artificial Intelligence.
- 1.3. A **decision** for the purpose of this standard is the action of choosing between two or more possible actions and may be derived from legislative, cabinet or other legal authority or can be operational, and may be discretionary or non-discretionary.
- 1.4. An **automated decision** for the purpose of this standard is a decision within an automated process where there is no substantial human involvement in making the decision.
- 1.5. **Discretionary decisions** require an exercise of judgment to choose between two or more possible actions.
- 1.6. A non-discretionary decision **does not** require any exercise of judgement to determine the appropriate action.
- 1.7. A **Business Owner** is the person who is accountable for the automated process at any given time.
- 1.8. For the purposes of this standard, “**bias**” refers to the tendency of an automated decision process to create unfair and unjustified outcomes, such as favouring or disfavouring one group over others.
- 1.9. Automated decisions may be biased because, for instance, the **datasets** they rely on are biased, potentially as a result of how data was collected in the past, or because **social conditions** mean that some groups are overrepresented in some risk groups.
- 1.10. The prohibited grounds of discrimination are set out in the **Human Rights Act 1993 Section 21**: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.
- 1.11. Discrimination on these grounds can be justified under the **Bill of Rights Act 1990 Section 5**, but only to such reasonable limits that are lawful and can be clearly and ethically justified.

2 Applicability

- 2.1 This standard **must** be applied using the operational guidance when:
- (i) there is a proposal to automate a decision (as defined in sections 1.3 and 1.4), **AND**
 - (ii) the automated decision has the **potential to affect**, an individual's entitlement, obligations, or eligibility status for support delivered or funded by the Ministry of Social Development (the Ministry).
- 2.2 Where a complex algorithm is being proposed, the Model Development Lifecycle **must** be used.
- 2.3 Any exception to this standard **must** be approved by the Chief Executive before automated decision-making can be implemented.

3 Standard Requirements

3.1 General

- 3.1.1 Automated decision-making **must**:
- (i) improve efficiencies and effectiveness of decision making and balance factors such as cost, accuracy, reliability and safeguarding the wellbeing of those affected.
 - (ii) comply with all applicable Ministry policies and standards that relate to the privacy, security and management of information.
- 3.1.2 Automated decision-making **must not** create inefficiencies for those the decisions directly affect, for example, creating manual workarounds for a client to enable automation, or unnecessarily increasing time from application to notification of a decision than would otherwise occur if it was manually completed.
- 3.1.3 There **must** be clear, relevant, and accessible guidance for users who are required to input or provide data to be used in automated decision-making, for example, a service user entering their information in MyMSD.

3.2 Accuracy, bias and discrimination

- 3.2.1 Accuracy and reliability **must** be assessed before automated decision-making is implemented to ensure, insofar as possible, that automated decision-making is producing expected results, that automated decisions do not deny clients full and correct entitlement (FACE), and bias and discrimination is well managed.
- 3.2.2 Based on the assessment carried out under 3.2.1, where evidence suggests that automated decision-making has resulted in unintended bias, steps **must** be taken to identify and remove or mitigate the unintended bias, and any residual risk **must** be accepted by the Business Owner.
- 3.2.3 Where unintended bias cannot be removed or sufficiently mitigated, substantial human involvement **must** be included in the process. This would then mean that the decision is no longer an automated decision.

3.3 Policy, fraud and legal considerations

- 3.3.1 Automated decisions **must** be lawful and align with policy intent.
- 3.3.2 An assessment must be undertaken to determine whether any proposed automated decision-making has the potential to:
- (i) Increase (or decrease) the likelihood that people will commit internal or external fraud or client non-compliance; or

- (ii) increase (or decrease) the scale or size of potential internal or external fraud or client non-compliance.
- 3.3.3 Any increased risk of fraud **must** be accepted by the Business Owner before automated decision-making can be implemented.
- 3.3.4 Prior to automating discretionary decisions, you **must** ensure that any legal risk(s) are identified and mitigated or accepted by the Business Owner before automated decision-making can be implemented.

3.4 Transparency

- 3.4.1 The Ministry **must** make information publicly available about:
 - (i) what policies and processes are used to identify and mitigate risks associated with automated decision-making, in particular those that relate to human rights and ethics; and
 - (ii) what decisions are made using automated decision-making as soon as reasonably practicable after they have been:
 - a. identified;
 - b. assessed against the Standard; and
 - c. approved by the Business Owner and the Standard Owner.
- 3.4.2 The Ministry **must** provide as much transparency as possible, while minimising the risk of fraud, to clearly explain how a decision has been made through the use of automation, including the role of humans in automating the decision and who is accountable for the process and the decision made.
- 3.4.3 If a lawful restriction prevents explanation, the Ministry **must** provide as much explanation as possible to the individual and clearly outline what details have been withheld and why.
- 3.4.4 The use of automated decision-making **must** be communicated to the individual in a way that is easy to understand and clearly shows a decision was made using automation, the outcome of that decision, and the process for challenging or appealing decisions.

3.5 Human oversight

- 3.5.1 A visible and accessible point of contact **must** be nominated for public inquiries about decisions made using automation.
- 3.5.2 The Ministry **must** provide a channel for challenging or appealing decisions made using automation and this channel **must** be made easily visible and accessible to the individual(s) impacted by the decision.
- 3.5.3 The process to review an automated decision that has been challenged or appealed **must not** itself be an automated process.

3.6 Compliance and assurance

- 3.6.1 Compliance with this standard **must** be verified for all new uses of automated decision-making through the existing Security, Privacy, Human Rights and Ethics Certification and Accreditation process.
- 3.6.2 Regular monitoring **must** be carried out to ensure that the automated decision-making continues to produce expected results and to ensure bias and discrimination are well managed.
- 3.6.3 A compliance review **must** be carried out at least once every three years or more frequently (based on the nature and level of risk connected to the process) to ensure that any automated

decision-making that is approved under this standard continues to meet the requirements of the standard.

4 References

- 4.1.1 Principal tools and policies used as inputs in the development of this Standard.

[Principles for Safe and Effective Use of Data and Analytics](#)

[Algorithm Charter for Aotearoa New Zealand](#)

[Data Protection and Use Policy](#)

- 4.1.2 Tools that directly support the application of this Standard.

[Operational Guidance](#)

[Data Model Lifecycle](#)

[PHRaE guidance: Operational analytics and automation](#)

Appendix 2

Safeguards for the Ministry of Social Development's (MSD) Use of Automated Decision-Making (ADM)

Table 1: Safeguards provided by MSD's ADM Standard

| Area | Safeguards |
|---|--|
| General requirements (Section 3.1 of the Standard) | ADM must improve efficiencies and effectiveness of decision-making and balance factors such as cost, accuracy, reliability and safeguarding the wellbeing of those affected. ADM must comply with all applicable policies and standards of MSD that relate to the privacy, security, and management of information. |
| Requirements for checking accuracy and bias (Section 3.2 of the Standard) | Accuracy and reliability must be assessed before implementation of ADM, and steps must be taken to identify and manage unintended bias and discrimination. Where unintended bias cannot be removed or sufficiently mitigated, substantial human involvement must be included in the process (this would then mean that the decision will no longer be an automated decision). |
| Policy, fraud, and legal considerations (Section 3.3 of the Standard) | Automated decisions must be lawful and align with policy intent. Impact on fraud and/or client non-compliance must be assessed before implementation. Specific requirements apply to proposed automation of discretionary decisions. |
| Transparency requirements (Section 3.4 of the Standard) | The Standard requires MSD to make information publicly available about what decisions are made using ADM. The use of ADM must be communicated to individuals in a way that is easy to understand and clearly shows a decision was made using automation, the outcome of that decision, and the process for challenging or appealing decisions. |
| Human oversight requirements for public inquiries and appeals (Section 3.5 of the Standard) | The Standard requires that a visible and accessible point of contact must be nominated for public inquiries about decisions made using automation. |
| | An easily visible and accessible channel must be provided to those impacted by the automated decisions for challenging or appealing decisions made using automation. |
| Compliance with the Standard (Section 3.6 of the Standard) | Compliance with the Standard must be verified for all new uses of ADM through risk assessments that cover privacy, human rights, and ethics considerations (this is done using MSD's Privacy, Human Rights and Ethics (PHRaE) framework). Regular monitoring must be carried out to ensure that ADM continues to produce expected results. Regular compliance reviews must be carried out (frequency to be based on the nature and level of risk connected to the process) to ensure that any approved ADM continues to meet the requirements of the Standard. This process is overseen by the Information Group's assurance function. |

Table 2: Safeguards for development of MSD's ADM Standard

| Area | Safeguards |
|---------------------------|---|
| Approval of the Standard | The Standard, and any changes to it, are approved by the Leadership Team, which is the highest level of governance body within MSD. |
| Consultation requirements | When developing, amending, revoking, or replacing the Standard, MSD is statutorily required to consult with the Privacy Commissioner, under section 363A(6)(a) of the Social Security Act 2018 (SSA). As a good practice, we also consult with the Government Chief Privacy Officer. |
| Review of the Standard | The Standard must be reviewed at least once every three years (section 363A(6)(b) of the SSA). However, the Standard is designed to evolve to ensure that any current issues or risks are picked up and addressed promptly. The next periodic review is scheduled for March 2025, but the Standard can and will be reviewed earlier than that as and when needed. |
| Publication requirements | The Standard must be published in the Gazette (section 363A(6)(c) of the SSA), and on MSD's website (section 363A(6)(d) of the SSA). |
| Relation to legislation | Primary legislation requires MSD to have an approved Standard for the use of automated electronic systems (section 363A(5) of the SSA), and to ensure that the use of the system is consistent with the approved Standard (section 363A(4)(c) of the SSA). This is currently limited to MSD's use of ADM in respect of child support payments (based on an approved information sharing agreement between MSD and the Inland Revenue Department). |

Table 3: Additional legislative safeguards for MSD's use of ADM

| Area | Safeguards |
|---|---|
| Reliability requirements | Section 363A(4)(a) of the SSA requires that MSD may approve the use of an automated electronic system only if the system is under the department's control, and if MSD is satisfied that the system has the capacity to make the decision with reasonable reliability (section 363A(4)(b) of the SSA). Meeting the reliability requirement necessarily involves assurance and testing for accuracy. |
| Human alternative always available | Section 363A(4)(d) of the SSA requires that MSD may approve the use of an automated electronic system only if one or more persons are always available as an alternative to make the decision. |
| Substitution of automated decision | Section 363C(2)(b)(ii) of the SSA provides that a specified person (e.g., MSD staff acting under a delegation from the chief executive) may substitute an automated decision with a new decision if they are satisfied that the new decision is more favourable to the affected person and could have been made under the same specified provision as the automated decision. |
| Rights to review and appeal processes remain unaffected | Section 363D(1) of the SSA provides that a person affected by MSD's use of automated electronic systems will continue to have the same rights of appeal or rights to apply for (administrative or judicial) review in relation to an automated decision as they would have had if the decision had been made by a specified person (e.g., MSD staff). |