



Automated Decision-Making Reform

Submission to the Attorney-General's Department

Brotherhood of St. Laurence

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Introduction

The Brotherhood of St. Laurence (BSL) is a social justice organisation working towards an Australia free of poverty. Our purpose is to advance a fair Australia through our leadership on policy reform, our partnerships with communities and the quality of our services. Our approach is informed directly by people experiencing disadvantage and uses evidence drawn from our research, together with insights from our programs and services, to develop practical solutions that work.

BSL is principally concerned with the use of Automated Decision-Making (ADM) in social services, including social security, employment services, aged care and disability services. Our feedback is focused on protecting the rights of all people in Australia, with particular concern for people with disability, older people, First Nations people, people from culturally and linguistically diverse backgrounds, people who are unemployed and people experiencing poverty and disadvantage.

We recognise the significant benefits ADM can deliver including improved accuracy, efficiency and timeliness in government service delivery. However, when things go wrong, it can have severe adverse impacts on people, particularly those experiencing vulnerability. Trust and confidence in government administration has been substantially undermined by Robodebt's devastating effects on people receiving social security payments. This damage is ongoing, with the [recent revelation](#) that some payment cancellations may have been unlawful.

These events continue to emphasise the critical importance of getting ADM settings right, and BSL supports the full implementation of recommendations 17.1 and 17.2 of the [Royal Commission into the Robodebt Scheme](#) (the Commission). A consistent legal framework across government is crucial, as is the establishment of a body to monitor and audit ADM. This submission outlines additional transparency and safeguarding mechanisms that BSL feels are required for the fair, ethical and

lawful use of ADM in government services. Below we respond to a selection of questions from the consultation paper.

Consultation paper questions

2. What transparency rules would be appropriate to build into the framework?

BSL concurs that transparency is essential. The necessary first step towards transparency is for government to fully understand the automated processes that already exist within their operations. All government departments and agencies should conduct a thorough review of current automations. Additionally, the legislative framework should require all government departments and agencies that use ADM to maintain a register that discloses all discretionary and non-discretionary ADM processes in use, including risk profiles.

While we support the disclosure of information about ADM on departmental websites, we feel this does not go far enough to deliver the transparency required. Many people do not have the digital capability or literacy to access information on websites. Tailored options must be made available for people to understand how ADM may affect them. This could be done by providing resources in non-digital modes and in Easy English in accessible settings such as service centres, for example. Government could also invest in training workforces, such as system navigators, to help provide information to people about the use of ADM.

It is also important to invest in the ongoing training and capability development of customer-facing staff in government. These staff should be well informed on the particulars of ADM and well equipped to explain how it may be used – or to understand when and how to refer people to an appropriate expert if needed.

Recommendation 1: That all government departments and agencies conduct a thorough review of current automations.

Recommendation 2: The legislative framework requires all government departments and agencies that use ADM to maintain a register that discloses all discretionary and non-discretionary ADM processes in use, including risk profiles.

Recommendation 3: Investigate tailored and accessible options to support people to understand how ADM may affect them, in addition to information provided on departmental websites, and invest in ongoing training and capability development on ADM for customer-facing staff in government.

3. What pre-implementation safeguards should apply where ADM is intended to be used?

BSL supports the position, outlined by academics Dr Yee-Fui Ng and Professor Stephen Gray, that:

guiding principles need to be built into any analysis of whether to adopt a new form of automated decision-making, or to continue its use. This requires more than a simple checklist, but rather a substantial consideration of the real and potential effects of the proposal upon the vulnerable.¹

Prevention of harm is always better than redress, so safeguards developed pre-implementation must be prioritised in ADM reform. We agree with the Commission and the Commonwealth Ombudsman (the Ombudsman) that ‘the design of automated systems should integrate administrative law, privacy and human rights obligations through appropriate planning and assessment’, including risk assessment and mitigation.² A specific requirement to undertake pre-implementation risk assessment directly relating to ADM, with reference to the Ombudsman’s *Automated Decision-making Better Practice Guide*, should be embedded in legislation, rather than departmental process alone.

Discretion is a central element of decision making when it comes to meeting the needs and protecting the rights of people who are vulnerable or experiencing disadvantage. BSL supports the Australian Council of Social Service (ACOSS) recommendation that any government decision that adversely affects a person and engages a person’s basic needs or rights must be made by a human being, and not by automation or AI technology. However, in the event that decision making is undertaken using automated processes, our recommendations regarding disclosure are listed under question 7.

In a survey of OECD countries, a trend has been identified that computerisation of social security leads to decreases in staffing, increased complexity and less human contact and is therefore more likely to ‘control rather than to empower’.³ This, in addition to the risk noted on page 10 of the consultation paper,⁴ that ADM may lead to the deskilling of human decision makers, highlights the significant risk of automation and other digital technologies reducing human judgement in complex and discretionary decisions. In addition, BSL is concerned that ADM may be deployed as a cost cutting measure in ways that negatively affect people experiencing vulnerability. To prevent these problems, government departments and agencies should be required to reinvest cost savings arising from digital efficiencies into front-line service delivery and other supports for people experiencing vulnerability.

An important safeguard in the design phase to protect sound decision making is the direct and meaningful involvement of people affected by ADM in its development.⁵ Elements of co-design and consultation should be incorporated into development processes for ADM.

¹ Ng, Y-F & Gray, S 2022, ‘Disadvantage and the automated decision’, *Adelaide Law Review*, vol. 43, no. 2, pp. 641–77, p. 643.

² Attorney-General’s Department 2024, *Use of automated decision-making by government: consultation paper*, Commonwealth of Australia, Canberra, p. 21.

³ Ng & Gray 2022, p. 670.

⁴ Attorney-General’s Department 2024.

⁵ Ng & Gray 2022; van Toorn, G & Carney, T 2024, ‘Decoding the algorithmic operations of Australia’s National Disability Insurance Scheme’, *Australian Journal of Social Issues*, vol. 0, no. 0, pp. 1–19.

As a further safeguard, any ADM process that engages people’s rights should be tested prior to and regularly during its use to assess whether the process is operating as intended, following guidance from the Ombudsman. This includes that ‘wherever possible, systems should be tested with a broad range of real users, service delivery staff, oversight agencies and other organisations that support users in the design and delivery stages’.⁶

Recommendation 3: That a specific requirement to undertake pre-implementation risk assessment directly relating to ADM, with reference to the Commonwealth Ombudsman’s *Automated Decision-making Better Practice Guide*, be embedded in legislation, rather than departmental process alone.

Recommendation 4: BSL supports the Australian Council of Social Service (ACOSS) recommendation that any government decision that adversely affects a person and engages a person’s basic needs or rights must be made by a human being, and not by automation or AI technology.

Recommendation 5: That government departments and agencies be required to reinvest cost savings arising from digital efficiencies into front-line service delivery and other supports for people experiencing vulnerability.

Recommendation 6: That elements of co-design and consultation be incorporated into development processes for ADM.

Recommendation 7: That any ADM process that engages people’s rights is tested prior to and regularly during its use to assess whether the process is operating as intended.

4. What system-level safeguards should be required to ensure that ADM operates appropriately?

BSL’s view is that all possible safeguarding options should be deployed, such as those outlined on page 21 of the consultation paper:

- requiring audit and compliance mechanisms
- requirements to ensure that automations comply with law
- requirements to ensure that automations are kept appropriately up to date.⁷

Too often, when an adverse decision is made, the burden of responsibility and onus of proof (to demonstrate the decision is incorrect or has not considered all relevant information) rests on the

⁶ Commonwealth Ombudsman 2024, *Automated decision-making: better practice guide*, Commonwealth Ombudsman, Canberra.

⁷ Attorney-General’s Department 2024.

individual. As the consultation paper notes on page 16, ‘considerable harm can occur before complaints-based processes such as merits review and judicial review can put a stop to further unlawful action’. The majority of effort should be invested in safeguards before implementation and at the systems level to avoid burden and responsibility falling on the individual affected. Safeguards are needed to redress the significant power imbalance that exists between people and government decision makers, and ADM itself.

Accountability must be enacted through active human presence, participation and judgement in decision making, supported by ongoing and robust legal and political scrutiny.

Recommendation 8: That all possible safeguarding options be deployed, such as those outlined on page 21 of the consultation paper: requiring audit and compliance mechanisms; requirements to ensure that automations comply with law; and requirements to ensure that automations are kept appropriately up to date.⁸

5. What decision-level safeguards should there be for persons affected by decisions made using ADM (for example, review rights)?

BSL recommends that human oversight be required before notification of a negative decision in social service systems.

BSL supports the Economic Justice Australia (EJA) recommendation that when accessing review of decisions in the social security system, Services Australia officers can understand the way that automation has contributed to the decision and can correct data and overturn decisions when appropriate. We extend this recommendation to apply to any decisions in the social service system (including employment, disability and aged care).

Recommendation 9: That human oversight be required before notification of a negative decision in social service systems.

Recommendation 10: BSL supports the Economic Justice Australia (EJA) recommendation that when accessing review of decisions in the social security system, Services Australia officers can understand the way that automation has contributed to the decision and can correct data and overturn decisions when appropriate. This should apply to all decisions in the social service system.

6. What post-decision safeguards should there be to allow a decision to be challenged after it has been made?

People experiencing vulnerability are often the least able to challenge decisions.⁹ Further, navigating complex service systems and review processes can be traumatic and the chronic stress involved can

⁸ Attorney-General’s Department 2024.

⁹ Ng & Gray 2022.

reduce people's ability to function in society. Processes must be established and built on best practice principles, to make access to appeal as simple and accessible as possible, designed to relieve unnecessary burden on the appellant. All communication about decisions must include clear details about how to seek review.

Recommendation 11: Processes to appeal decisions must be established and built on best practice principles, including the provision of clear information about review pathways, to make access to appeal as simple and accessible as possible, designed to relieve unnecessary burden on the appellant.

7. Should individuals be notified of the use of ADM? If so, should notification be required at a specific point in the decision-making process, or should flexibility be provided to agencies about the appropriate time to make a notification?

In addition to public disclosure of the use of ADM in government decision making discussed above, if a decision affects the rights of an individual (for example, the amount of money or support a person receives), when the person is notified of the decision, government departments and agencies should be required to include information about the specific use and application of ADM in making that decision. Decision letters should include information to advise people if automation has been involved in reaching the decision, *and how*, in plain language. Additionally, written communications about a decision should include the contact details of a qualified person or team who can provide clarification about the use of ADM in reaching the decision.

Recommendation 12: That, when a person is notified of a decision that affects their rights, government departments and agencies are required to include information about the specific use and application of ADM in making that decision.

Recommendation 13: That written communications about a decision include the contact details of a qualified person or team who can provide clarification about the use of ADM in reaching the decision.

8. Should there be any exemptions to ADM safeguards? If so, what exemptions should be included and why?

BSL does not support exemptions to ADM safeguards for decisions that engage the rights of people experiencing vulnerability.