

Attorney General's Department

Via: <https://consultations.ag.gov.au/integrity/adm/consultation/>

18 December 2024

EJA submission to the Attorney General's consultation on the use of automated decision-making by Government

About Economic Justice Australia

Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.

EJA provides expert advice to government on social security reform to make it more effective and accessible. Our law and policy reform work:

- strengthens the effectiveness and integrity of our social security system
- educates the community
- improves people's lives by reducing poverty and inequality.

Introductory comments

The Attorney General's consultation is a welcome and critical element of the Government's implementation of Robodebt Royal Commission's recommendations 17.1 and 17.2 about the use of automation in decision-making (ADM).

EJA has in-depth knowledge of the way ADM affects the clients of community legal centres as the result of research we undertook with EJA members, overseen by an expert advisory group. This has informed the publication of a set of principles for the *Safe use of automation in social security*.¹

The aforementioned research collected experiences of digitisation and automation, including those which have knock-on effects for social security decisions such as accessibility, data accuracy, data matching processes, skills of the Services Australia workforce, displacement of

¹ [Learning from past mistakes: Principles for safe use of automation in social security — Briefing #2](#), Economic Justice Australia.

human decision-makers, accessibility of merits review and impact of adverse decisions on the most vulnerable people in our communities.

Great care must be taken in the adoption and use of ADM within the social security system. Social security should be regarded as a high-risk setting for the use of ADM, given that decisions affect essential payments and rights of vulnerable populations. Further, the scale of the social security system means significant numbers of people are affected by its use of ADM, noting an estimated 50 per cent of the population receives or has received social security entitlements at some point in their lives.²

We support the introduction of a vigorous approach to the governance of ADM systems used in social security, with legislated safeguards that provide a high level of accountability and an oversight body with jurisdictional teeth to ensure that government departments develop, implement and maintain safe and responsible ADM systems.

The legislated safeguards discussed in this consultation should also be developed with reference to the powers of the yet to be appointed oversight body as per Robodebt Royal Commission recommendation 17.2.

In the case of social security decision-making, the framework of safeguards should be mandatory rather than optional, and should apply to the Department of Social Services (DSS) and the Department of Employment and Workplace Relations (DEWR).

Overarching recommendations

EJA understands the current consultation is limited to the discussion paper questions, Nonetheless, it is important to set out our vision for a comprehensive legislative framework of safeguards for ADM that:

Recommendation 1: Name social security as a high-risk setting for ADM and AI because of the impact it has on payments and services that are vital for the economic security of vulnerable people.

Recommendation 2: Establish an ongoing Automation Safety Commission to provide technical expertise, adherence to safeguards and best practice standards, and provide additional accountability over government uses of ADM systems (as per Robodebt Royal Commission recommendation 17.2).

Recommendation 3: Legislate safeguards for the regular testing and auditing of ADM systems used to make administrative decisions including those that are partially automated if the automated component forms a material part of the ultimate decision.

² [Australian Priority Investment Approaches to Welfare – Infographic](#), Department of Social Services, Australian Government

Recommendation 4: Conduct an independent and transparent audit and establish a public register of all ADM applications used across government.

Recommendation 5: Legislate requirements to undertake a Human Rights Impact Assessment (HRIA) when automation is being used in high-risk settings.

Recommendation 6: Legislate a requirement for appropriately skilled humans to be able to review and overturn decisions that may adversely affect claim or debt decisions or debt quantum calculations, or where the use of discretion is enabled by the legislation.

EJA position on the discussion paper questions

1. How should the need for transparency about the use of ADM be balanced with the need to protect sensitive information about business processes and systems?

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

When it comes to decisions affecting essential benefits and rights, transparency about the decision-making process should take precedence over protecting business processes, particularly given the catastrophic consequences that can occur without proper oversight.

All government departments with administrative responsibilities that draw on ADM to make decisions should be required by legislation to maintain a public register of all ADM systems in use. This should additionally set out where and how automation is being used.

To ensure that personal and sensitive data is protected and used ethically, there is a need for:

- transparency about which data sources are being used, including what information is being shared between agencies
- clear information about how personal data is being used, and
- clarity about how data matching processes are being used in the ADM.

There is also a need for procedural transparency comprising:

- clear documentation of decision-making processes;
- identification of human oversight points;
- clear pathways for questioning or challenging decisions;
- explanation of review rights and processes; and
- opportunities to correct incorrect data.

While maintaining transparency about impacts and processes, certain technical details could remain protected such as:

- detailed system architectures;
- specific coding implementations;
- internal security measures; and
- proprietary technical specifications.

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

Social security is a high-risk setting. Therefore, legislative protection should ensure the following pre-implementation safeguards are mandatory. They could form part of a minimum set of standards for the safe use of ADM, overseen by a designated officer (for example, a Chief Information Officer) of each responsible department.

- **Holistic risk assessment** that is more than a "tick box" exercise and includes consultation with relevant stakeholders about the potential benefit of the automation and its impact on affected populations; and evaluation of impacts on relevant discretionary decision-making.
- **Human Rights Impact Assessments (HRIA)** that includes an assessment of compliance with international human rights law and potential risks to human rights as are relevant to each jurisdiction such as the right to social security.

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

There is a need for adherence to clear standards and testing requirements during the system lifecycle, including:

- a) Regular review and audit processes with:
 - transparent procedures
 - realistic timeframes
 - the ability to keep pace with legislative changes.
- b) Timely and genuine use of feedback collected from system users/operators and stakeholders to ensure the systems are not causing harm.
- c) Careful scrutiny of the way that legislative and policy changes affect the decision-making processes and outcomes.

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

Social security is a high risk setting and all decisions that affect social security payments should be subject to review processes particularly when automated processes may have been used in the calculations underpinning the decision. Examples of decisions that should never be made without human oversight include:

- cancellations of payments;
- calculation of debts over \$10,000;
- debt waiver assessments;
- discretionary decisions;
- complex personal circumstances where multiple factors need to be considered;
- interpretation of "special circumstances";
- cases involving family violence considerations;
- situations requiring waiver of waiting periods; and
- compensation preclusion period assessments.

Given the potential of automation to obscure the decision-making process, there is need to ensure that access to a human decision maker is made available. This is particularly the case for decisions involving the:

- suspension or cancellation of payments
- calculation of significant debt;
- debt raising decisions where overpayment is due to alleged non-compliance;
- cases involving vulnerable individuals;
- payment rate or payment type changes requiring discretion;
- decisions relating to employment services compliance; and
- decisions relating to the contents of job plans.

When accessing review, it is important that Services Australia officers are able to understand the way that automation has contributed to the decision, and to be able to correct data and overturn this when appropriate.

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

There is a need for post-decision-level safeguards to ensure that:

- communications are in plain language and understandable without specialist expertise; and
- decision letters clearly explain the legal basis for decisions.

To be able to effectively challenge decisions, people affected as well as their legal representatives, need to be able to access:

- clear pathways to challenge decisions;
- transparent decision-making trails including access to the information relied upon and method of decision-making; and
- clear documentation of decisions for administrative review.

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?

Consideration should be given to finding a way to notify the general public that automation is routinely used in government services. This could take the form of standard wording, which also provides a person with information about who to contact with any concerns about the decisions being made within the relevant department, and access to an independent complaints mechanism.

Notifying individuals of “the use of ADM” will mean little to most people or may inadvertently cause unnecessary alarm. Instead, people should be provided information about how ADM was used – for example, correspondence from Services Australia might read: “Data matching with the ATO shows your 2023–24 taxable income is different to the amount you estimated and advised in relation to your Family Tax Benefit entitlement.”

When the automated elements of a decision are relevant to the review of the decision, there should be clear and detailed communication of these to people seeking review, including the ways that preliminary automation, such as data matching, or the use of calculators, might have informed the outcome of the decision.

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

EJA does not recommend exemptions from ADM safeguards for high-risk settings such as social security.

9. Should safeguards be different depending on the risks associated with the use of ADM for a particular decision or administrative action?

Social security is a "high-risk setting" for ADM. There must be safeguards in place to protect individuals' access to essential social security payments per their legal entitlement.

The relevant principle is that ADM should never be used alone in situations where human judgment, discretion, and understanding of complex personal circumstances are crucial to making fair and lawful decisions.

References

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