

Regulatory Impact Statement: Automated Decision-Making in the Welfare System

Coversheet

This Regulatory Impact Statement contains legal advice, which is legally privileged. Before any public release, legal advice should be requested to identify which text is legal advice, and to determine what should be withheld.

Purpose of Document	
Decisions sought:	<p>Agreement to amend the Social Security Act 2018 with a broad authorising provision that would allow the Ministry of Social Development (MSD) to use Automated Decision-Making (ADM) across its portfolio responsibilities, accompanied by appropriate safeguards.</p> <p>s 9(2)(h)</p>
Advising agencies:	Ministry of Social Development
Proposing Ministers:	Minister for Social Development and Employment
Date finalised:	24 February 2025
Problem Definition	
<p>The Ministry of Social Development (MSD) uses Automated Decision-Making (ADM) to deliver a range of services and support in the welfare system.¹ s 9(2)(h)</p>	
<p>MSD also uses ADM for some processes that contain discretionary decisions.² s 9(2)(h)</p>	
Executive Summary	
<p>The use of ADM can help improve MSD’s administration of the welfare system by improving the efficiency of decision-making and providing more responsive support to clients. Using ADM where appropriate creates operational efficiency through the ability to automatically process large volumes of routine administrative tasks. This can free up staff time, enabling them to instead focus, for example, on high-value employment</p>	

¹ Automation is the use of electronic systems to replace repeatable processes. Automated Decision-Making (ADM) occurs when an electronic system makes a decision (including a statutory decision) within an automated process where there is no substantial human involvement in making the decision.

² Discretionary decisions require an exercise of judgment to choose between two or more possible actions (for example, decisions where MSD staff would typically consider individual client circumstances before making a decision on whether to grant a benefit to the client).

conversations with clients, which in turn can contribute to the Government's target to have 50,000 fewer people on Jobseeker Support by 2030.

Since 1 July 2023, a limited authorising provision has been in place in the SSA for the use of ADM by MSD in relation to the treatment of some child support payments.³ MSD's use of ADM for this purpose is also subject to legislative safeguards. This includes the requirement for MSD to have an approved standard for the use of ADM, and for that use of ADM to be consistent with the standard. MSD has developed the ADM Standard to govern the development of any process where it uses ADM.⁴

s 9(2)(h)

Further, MSD uses ADM for some processes that contain discretionary decisions. s 9(2)(h)

This Regulatory Impact Statement (RIS) contains the details of MSD's proposed two-part legislative solution for strengthening its position in the use of ADM. s 9(2)(h)

- introducing a broad authorising provision in the SSA to provide clear legislative authority for the use of ADM across MSD's portfolio responsibilities, accompanied by appropriate safeguards, and
- s9(2)(h)

Progressing this two-part solution will enable MSD to continue using ADM in future to modernise its operating model, and to ensure the efficient and effective administration of the welfare system.

³ Under sections 363A to 363D of the SSA. MSD notes that Cabinet recently agreed to expanding the limited ADM authorising provision to cover the use of ADM for some aspects of the following proposals: introduction of the Traffic Light System and the 26-week reapplications of Jobseeker Support benefit [SOU-24-MIN-0096 and CAB-24-MIN-0295.01 refer], and the cost-savings initiative to recognise housing contributions from all boarders [CAB-25-MIN-0014 refers].

⁴ The ADM Standard ensures that when an ADM process is implemented, there are sufficient safeguards suited to the particular circumstances, and MSD can show that the relevant law and facts were taken into account.

Limitations and Constraints on Analysis

The analysis underpinning this RIS contains the following constraints and assumptions:

- Narrow scope:** s 9(2)(h) [redacted]
 [redacted]
 [redacted]
 [redacted] An ADM authorising provision already exists in legislation which has informed the scope of options considered in this RIS. MSD has sought to maintain or improve current practice through the remediation options for ADM processes where appropriate and has not explored other policy changes due to operational and funding constraints.
- Assumption about improved accuracy:** It is assumed that ADM will improve accuracy of decision-making for MSD and improve outcomes for clients. s9(2)(g)(i) [redacted]
 [redacted]
 [redacted] It is assumed that using ADM will be safe with the right safeguards.
- Assumption about social licence:** It is assumed that MSD has the social licence to use ADM. It is assumed that the widespread use of automation outside the welfare system may mean the public would support and even expect ADM in the welfare system. However, the public may have a range of perspectives which have not been tested.
- Limitations on modelling undertaken:** MSD has only undertaken modelling for costings of the recommended remediation options. Modelling relating to costings or FTE impacts has not been undertaken for alternative remediation options or for options to achieve clear legislative authority. This limits the depth of comparison of impact analysis between options.
- Limitations on consultation:** Consultation has been limited to the Parliamentary Counsel Office, the National Beneficiaries Advocacy Consultative Group, and relevant public service agencies. As the proposals contained in this RIS require legislative changes, the Select Committee process will provide opportunity for wider consultation and input from the public. Commentary from submitters on a recent bill proposing partial expansion of the ADM authorising provision has also informed our analysis.

Responsible Manager(s) (completed by relevant manager)

Leah Asmus
 Policy Manager
 Welfare System Policy
 Ministry of Social Development
 24 February 2025

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Social Development
Panel Assessment & Comment:	The panel reviewed the RIS and concluded that the RIS partially meets the quality assurance criteria. The panel considers that the assessment is generally clear, complete and convincing. However, there has been limited consultation with the public on

the proposals, and the limitations on the modelling undertaken means the impacts of several of the proposed options are not able to be fully quantified.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. Leveraging technology to deliver modern services at scale is a government-wide issue, particularly as clients' needs and expectations of how public services are delivered continue to change. Work is being undertaken to modernise the public service and deliver better outcomes for all New Zealanders through the Digitising Government Portfolio.⁵
2. There is an increasing use of electronic systems across government agencies to automate processes and functions, including some decision-making functions. MSD's use of ADM has also increased in recent years to cope with the rising demand for welfare support. MSD currently uses ADM to deliver a range of services and support in the welfare system.
3. The use of ADM, where appropriate and when used with relevant safeguards, creates operational efficiency through the ability to automatically process large volumes of routine administrative tasks (such as triggering reviews of assistance). This can free up staff time and enable them to instead focus on meaningful interactions, such as high-value employment conversations with clients. Employment conversations, in turn, can contribute to the Government's target to have 50,000 fewer people on the Jobseeker Support benefit by 2030.
4. Since 1 July 2023, a limited authorising provision has been in place in the SSA which enables MSD's use of ADM in relation to the treatment of some child support payments.⁶ The legislation also includes a requirement for MSD to have an approved standard in force at all times and for that use of ADM to be consistent with the approved standard. MSD has developed the ADM Standard (the Standard) to govern the development of any process where it uses ADM.⁷ The Standard contains appropriate safeguards to mitigate any potential risks or negative impacts of using ADM.⁸ The Standard is robust and will continue to apply to any new processes that use

⁵ The Digitising Government Portfolio also includes responsibility for the Government Chief Digital Officer (GCDO) function. The GCDO is leading the work programme to support the safe and trusted uptake of the Artificial Intelligence (AI) technology across the New Zealand public service and has recently released the Public Service AI Framework which sets out a structured approach to safely deploy forms of AI in the public service.

⁶ The Child Support (Pass On) Acts Amendment Act 2023, which amended the Child Support Act 1991 and the SSA 2018, included a set of ADM legislative provisions (sections 363A to 363D of the SSA) targeted solely to MSD's use of ADM in respect of the treatment of some child support payments.

⁷ The Standard was first approved by MSD's Leadership Team in 2022. MSD consulted with the following when developing the ADM Standard: relevant agencies (including the Office of the Privacy Commissioner, Social Wellbeing Agency, Government Chief Privacy Officer, Human Rights Commission, Statistics New Zealand, ACC, Inland Revenue); and relevant private sector organisations (including the National Beneficiaries Advocacy Consultative Group, the University of Otago Centre for Artificial Intelligence and Public Policy, Auckland University of Technology Centre for Social Data Analytics, the World Economic Forum NZ Government Fellow for AI & Machine Learning).

⁸ s 9(2)(h)

ADM at MSD. A copy of the Standard is attached at Appendix 1. A summary of the full range of safeguards in place for MSD's use of ADM is attached at Appendix 2.

5. MSD intends to use ADM more broadly in the future where risks to the organisation and clients are low. Expanding the use of ADM contributes to the efficient and effective administration of the welfare system and enables MSD to better target its workforce to more valuable interactions, for example, staff providing appropriate employment supports to clients, or holding other important conversations with clients regarding discretionary supports. MSD has been advised that there may be interest in a blanket approach to public service agencies' use of ADM. MSD would support this coordinated approach and recommends that the proposals in this RIS continue, [s 9\(2\)\(h\)](#)

What is the policy problem or opportunity?

The problem

6. There are two aspects of the problem.
7. [s 9\(2\)\(h\)](#)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[s9\(2\)\(g\)\(i\)](#)
[Redacted] Options to address the issue of clear legislative authority with appropriate safeguards are covered in Section 2.1 of this RIS.
8. Secondly, MSD is currently using ADM for some processes that contain discretionary decisions. [s 9\(2\)\(h\)](#)
[Redacted]
[Redacted]
[Redacted]
[Redacted] Officials have categorised these processes covered in this RIS into three groups: Mandatory Reviews,¹⁰ End of School Year process, and Medical Reviews. [s 9\(2\)\(h\)](#)
[Redacted]
[Redacted]
[Redacted]

The opportunity

9. There is an opportunity to progress a two-part legislative solution through one bill [s 9\(2\)\(h\)](#)
[s 9\(2\)\(h\)](#) This solution will enable the efficient and effective administration of the welfare system, while also enabling MSD to continue using ADM in the future to modernise its operating model.

[s 9](#)
[Redacted]

¹⁰ MSD notes that Cabinet has recently made decisions regarding some of the ADM mandatory review processes [CAB-25-MIN-0014 refers] which are being progressed separately through the cost-savings initiative work to recognise housing contributions from all boarders.

10. s 9(2)(h) [Redacted]

11. Introducing clear legislative authority (through enacting a general authorising provision with appropriate safeguards) is one part of MSD's proposed two-part legislative solution. s 9(2)(h) [Redacted]

Population group impacts

12. MSD notes that clients can be members of multiple population groups. The proposals in this RIS will not be targeted to any specific population groups. It is therefore difficult to predict how many clients may be impacted within each group. While the use of ADM can help administer rules-based decision-making efficiently, it is difficult to separate the impact of the use of ADM as a tool, from the impact of the rules themselves which ADM helps to implement.

13. As required by the ADM Standard, MSD will ensure that the use of ADM is transparently communicated to clients in a way that is easy to understand and that clearly shows the decision was made using ADM and the outcome of that decision. A visible and accessible point of contact for public inquiries about decisions made using ADM will also be in place, along with a visible and accessible channel for challenging or appealing decisions made using ADM.

Māori

14. Māori are disproportionately represented in the welfare system compared to the overall working-age population. While the proposals in this RIS will not be targeted to Māori, MSD's overall use of ADM, if not implemented appropriately, may have a greater impact on them due to the make-up of the benefit population. ADM can make decisions at scale and relies on the availability of data which may not always be accurate to inform the automated decisions. s9(2)(g)(i) [Redacted]

15. However, when implemented with appropriate safeguards, including those provided by MSD's ADM Standard, the use of ADM is expected to improve the experience and accessibility of services in the welfare system, including for Māori. For example, the

11 s 9(2)(h) [Redacted]

s 9(2)(g) [Redacted]

automatic granting of the Winter Energy Payment¹³ to a large number of clients every year during the winter period means that clients can receive support more quickly. This can potentially reduce the stress and stigma that some clients, for example, young Māori mothers, report feeling while applying for support from MSD through face-to-face appointments.¹⁴

Pacific peoples

16. Pacific peoples are also disproportionately represented in the welfare system as compared to the overall working-age population. The proposals contained in this RIS, if not used appropriately, may have a greater impact on them due to the make-up of the benefit population. However, these concerns are largely addressed through appropriate safeguards in the ADM Standard, which require that MSD has taken sufficient steps to manage unintended bias or discrimination, is transparent with clients about the use of ADM, and is maintaining human oversight by providing channels for public inquiries or for challenging automated decisions.

Older people

17. Some of the largest groups of people interacting with the welfare system are recipients of New Zealand Superannuation and Veteran's Pension. With an ageing population in New Zealand, this cohort of clients is likely to continue to grow over time. With the right safeguards, MSD's use of ADM can help simplify the process through which older people can receive support, for instance, through the automatic granting of Winter Energy Payment. MSD will also continue to provide channel choice¹⁵ and assistance to clients to navigate the requirements of the welfare system.

Disabled people

18. If not used with appropriate safeguards, the use of ADM can have implications for disabled people including people with health conditions. As described in Section 2.2 of this RIS, MSD's preferred remediation option for Medical Reviews is to maintain the current practice of using ADM to request a subsequent medical certificate, and then stop a client's assistance if the requested information is not provided (or if the client does not contact MSD with a good reason for being unable to provide the requested information) within a specified period. Some disabled people may find it difficult to respond to their review within the required timeframes. As with current practice, MSD will continue to consider applying a discretionary extension to the timeframes where appropriate, if a client has a good and sufficient reason for the delay in providing a medical certificate. This ensures that clients are not negatively impacted due to no fault of their own. MSD will also continue to offer channel choice to clients which is particularly important for the different groups within this cohort (e.g. those who would prefer completing their review with a staff member can choose to do so).

¹³ Winter Energy Payment is a non-taxable benefit paid to people receiving a qualifying benefit, New Zealand Superannuation, or Veteran's Pension to support them to meet their household heating costs during the winter period. It is currently paid for a 22-week period from 1 May and is then stopped at the end of this period.

¹⁴ Cram, F., Hermens, J., Adcock, A., Te Huia, B., & Keenan, C. (Forthcoming). *How young Māori mothers have experienced changes in income support since 2018: Research report prepared by Katoa Ltd for the Ministry of Social Development.*

¹⁵ Channel choice refers to the ability of clients to apply for support via the channel they are most comfortable with, for example, via face-to-face, or phone-based, or online channels. The continued availability of channel choice was brought up as an area of concern by the National Beneficiaries Advocacy Consultative Group when MSD consulted with them. MSD will continue to operate multiple channels through which clients, including older people, can apply for and receive assistance from MSD (regardless of whether ADM is used in the process).

Women

19. Women make up almost half of all people receiving a working-age benefit. MSD's use of ADM with the right safeguards is expected to help mitigate any potential negative outcomes for women in the welfare system, including in areas where they are disproportionately represented. For example, allowing MSD to use ADM to trigger mandatory review of specified benefits at least once every 52 weeks could result in clients' payments being increased, decreased, or stopped, depending on their circumstances. This will help reduce the accumulation of potential debt or underpayments for all clients including women and women carers receiving the specified benefits over time (see Section 2.2 of this RIS).

Children

20. While the proposals in this RIS will not be targeted to children, MSD notes that the use of ADM for certain review processes that involve children may have potential impacts on them, for example, when carers who are in receipt of Unsupported Child's Benefit or Orphan's Benefit, are unable to respond to the reviews within specified timeframes and the benefit is automatically stopped. MSD will ensure that safeguards are in place (for example, through appropriate extensions or exemptions) so that children are not negatively impacted due to these proposals.

Te Tiriti o Waitangi implications

21. As mentioned earlier, Māori are disproportionately represented in the welfare system compared to the overall working-age population. Māori have not been engaged on the specific proposals outlined in this RIS and targeted consultation with them has not been undertaken. However, MSD's ADM Standard, Privacy, Human Rights and Ethics (PHRaE) framework (including guidance on Te Tiriti o Waitangi/The Treaty of Waitangi), and certification and accreditation processes together provide safeguards for any use of ADM. These safeguards require that unintended bias or discrimination against Māori (or other groups), or other forms of non-compliance with the principles of the Treaty, are addressed before the ADM process is implemented. MSD notes that one of the requirements under the ADM Standard is that where unintended bias cannot be removed or sufficiently mitigated from an ADM process, substantial human involvement must be included in the process, which would then mean that the decision is no longer an automated decision. On balance, with the right safeguards, MSD expects that its use of ADM will be consistent with the principles of the Treaty. We do acknowledge, however, that the proposals in this RIS will apply equally to all clients affected by the use of ADM (rather than being targeted specifically), and so the Treaty principles of active protection and equity (as opposed to equality) may not be satisfied.

What objectives are sought in relation to the policy problem?

22. The objective is to ensure that there is clear legislative authority for the use of ADM across the full ambit of MSD operations, accompanied by appropriate safeguards. s 9(2)(h) the following set of objectives is specific to MSD's use of ADM:

- improving the efficiency and effectiveness of the administration of the welfare system
- safeguarding MSD's use of ADM in the welfare system as well as safeguarding client interests and rights
- providing certainty for MSD's future operating system (through enabling programmes such as the Te Pae Tawhiti transformation programme that seeks to modernise MSD's operating model).

Section 2.1: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

23. To compare the options to status quo, this RIS assesses whether the option:
- **s 9(2)(h)** [REDACTED]
 - is feasible to implement (including timing considerations and fiscal implications)
 - improves the efficiency and effectiveness of MSD's administration of assistance (providing the right assistance to people in a timely way at a reasonable cost)
 - safeguards MSD's use of ADM (client interests and rights are safeguarded and potential negative impacts mitigated)
 - improves certainty for future planning (supporting future enhancements to MSD's operating model).

What scope will options be considered within?

24. **s 9(2)(h)** [REDACTED]
25. An ADM authorising provision already exists in legislation which empowers MSD to use ADM for decisions related to the treatment of some child support payments. This provision informed the scope of options considered in this RIS.
26. Some options that were considered for achieving clear legislative authority for ADM but were discarded are attached at Appendix 3.

What options are being considered?

27. There are three options:
- Option One – Status quo (do nothing)
 - Option Two – Counterfactual/non-regulatory (removing all current uses of ADM)
 - Option Three – A broad authorising provision in the SSA that would allow MSD to use ADM across its portfolio responsibilities, accompanied by appropriate safeguards (recommended).

Option One – Status quo (do nothing)

28. Clear legislative authority for MSD’s use of ADM is currently limited to the treatment of some child support payments.¹⁶ As part of MSD’s stewardship obligations, MSD needs to ensure that the regulatory framework is fit-for-purpose, including being consistent with the law. s 9(2)(h)
29. s 9(2)(h)
30. s 9(2)(h) Removing ADM will have substantial impacts on MSD’s operating model, including longer processing times for in-person and manual processing, higher workloads for staff (including IT system changes), and longer application processes for clients, which could risk putting them in further hardship.
31. For these reasons, this option has been discounted, as maintaining status quo would not be a viable option for MSD’s use of ADM.

Option Two – Counterfactual/non-regulatory (removing all current uses of ADM)

32. This option would involve removing all current uses of ADM¹⁷ in MSD’s processes through operational means. This would require redesigning a number of processes that currently contain ADM.

s 9(2)(h)

33. s 9(2)(h)

Will this option be feasible to implement (including timing considerations and fiscal implications)?

34. This option would have substantial impacts on MSD’s operating model and require considerable time and resources to implement due to the complex nature of MSD systems and IT/system constraints. Removing ADM from the current processes will require additional staff, training, costs, and implementation time, along with the roll-out of new business rules and changes to IT systems (with costs). For example, if MSD were to remove the use of ADM for granting the Winter Energy Payment, it is estimated that MSD would require approximately 600 full-time equivalent (FTE) staff per day for an eight-week period to process all Winter Energy Payment grants manually.¹⁸

¹⁶ MSD notes that Cabinet recently agreed to expanding the limited ADM authorising provision to cover the use of ADM for some aspects of the following proposals: introduction of the Traffic Light System and the 26-week reapplications of Jobseeker Support benefit [SOU-24-MIN-0096 and CAB-24-MIN-0295.01 refer], and the cost-savings initiative to recognise housing contributions from all boarders [CAB-25-MIN-0014 refers].

¹⁷ This means all current uses of ADM other than the use of ADM for the treatment of some child support payments for which a limited authorising provision is currently in place in the SSA.

¹⁸ This estimate is based on over 900,000 people receiving Winter Energy Payment as at June 2022, assuming an eight-week processing window for granting these payments.

BUDGET SENSITIVE

35. As illustrated through the above example, removing the use of ADM would create pressure on MSD's frontline and could potentially erode service levels for our clients, as staff will be required to carry out high volumes of repetitive administrative tasks (such as manually setting review periods for different types of assistance).

Does this option improve the efficiency and effectiveness of MSD's administration of assistance (providing the right assistance to people in a timely way at a reasonable cost)?

36. Without additional funding, this option would require reprioritising or moving staff from other areas of work (such as high-value employment conversations with clients) to manual processing of administrative tasks, impacting the delivery of outcomes in the affected areas. Clients would likely experience delays in processing of applications, which could risk putting them in further hardship.
37. This option would also require the hiring of additional staff to support the increased manual workload once ADM was removed from all processes. For context, as per MSD's impact assessment prior to the implementation of the Child Support Pass-On changes,¹⁹ it was estimated that the use of ADM would mitigate the need for MSD to hire approximately 150 FTE.²⁰ This FTE estimate was only about charging one type of income (related to child support payments), and given that MSD currently uses ADM for a number of other processes, the total number of additional staff that would be required under this option is likely to be considerably higher.
38. Overall, this option would slow down MSD's administration of the welfare system. There would also be transitional costs involved in shifting from processes that use ADM, to manual processes.

Does this option safeguard MSD's use of ADM (client interests and rights are safeguarded and potential negative impacts are mitigated)?

39. This option would remove all uses of ADM, therefore the criteria of safeguarding the use of ADM is not applicable to this option.

Does this option improve certainty for future planning?

40. This option would not provide certainty that ADM could be used to improve MSD's systems and services in future.

Option Three – A broad authorising provision in the SSA that would allow MSD to use ADM across its portfolio responsibilities, accompanied by appropriate safeguards (recommended)

41. This option would amend the SSA with a broad authorising provision that would allow MSD to use ADM across its portfolio responsibilities, accompanied by appropriate safeguards. This would expand the current legislative authority to enable MSD to use ADM to administer the welfare system more broadly. It would also continue to include the requirement for MSD to comply with the Standard for future ADM processes.
42. This option would authorise the use of ADM across MSD's portfolio responsibilities, whether under other legislation (primary or secondary) or other sources of authority.

s 9(2)(f)(iv)

It would amend the SSA to authorise the Chief Executive to approve the use of an automated electronic system to make any decision, exercise any power, comply

¹⁹ These changes came into force on 1 July 2023 and enabled MSD to use ADM to automatically charge some child support payments as income when determining the amount of financial assistance payable under the SSA.

²⁰ Estimate of FTE that would otherwise have been required for meeting the increased demand on MSD's services if ADM had not been used for implementing the Child Support Pass-On changes. This was based on approximately 50,800 families that were estimated to be affected by the Child Support Pass-On changes per year.

with any obligation, or carry out any other related action. s9(2)(h)

- [Redacted]
- [Redacted]
- [Redacted]

43. s 9(2)(h)

The ADM Standard provides for transparency by requiring MSD to explicitly inform clients when ADM is being used for a specific decision. This enables clients to take appropriate steps to challenge the automated decision if necessary. The ADM Standard also requires MSD to publish information about the types of decisions MSD makes utilising ADM (in accordance with section 3.4.1 of the ADM Standard), and the safeguards in place to mitigate risks associated with ADM.

s 9(2)(h)

44. s 9(2)(h)

Will this option be feasible to implement (including timing considerations and fiscal implications)?

45. This option would be more feasible to implement than removing ADM altogether (see Option Two). As only the primary legislation would contain the authorising provision, this option would also simplify future amendments (i.e. by not requiring amendments to secondary legislation or other Acts if changes to the authorising provision were necessary).

Does this option improve the efficiency and effectiveness of MSD's administration of assistance (providing the right assistance to people in a timely way at a reasonable cost)?

46. This option would create operational efficiency by allowing MSD to make a large volume of automated decisions, where appropriate, in all parts of MSD's operations. This, in turn, would enable staff to focus on supporting clients through high-value employment-related conversations.

47. By providing clear legislative authority for MSD's use of ADM, particularly for simple, rules-based decisions, this option would allow for effective use of MSD's limited human resources. The improved effectiveness would be reflected in decisions made across the full ambit of MSD operations.

Does this option safeguard MSD's use of ADM (client interests and rights are safeguarded and potential negative impacts mitigated)?

48. This option would provide clear legislative authority for MSD's use of ADM accompanied by appropriate safeguards, including a mandate for MSD to comply with the ADM Standard for future ADM processes. Incorporating a broader requirement in 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 safeguard the wellbeing of those affected by automated decisions.

s 9(

BUDGET SENSITIVE

Does this option improve certainty for future planning?

49. Clear legislative authority across MSD's portfolio responsibilities would provide certainty that the use of ADM is in line with policy intent and can therefore be relied upon for future enhancements to MSD's operating model. s 9(2)(h)

BUDGET SENSITIVE

How do the options compare to status quo/doing nothing?

	<i>Option One – Status quo (do nothing)</i>	<i>Option Two – Counterfactual/non- regulatory (removing all current uses of ADM)</i>	<i>Option Three (recommended) – A broad authorising provision in the SSA that would allow MSD to use across its portfolio responsibilities, accompanied by appropriate safeguards</i>
s 9(2)(h)			
Feasible to implement (including timing considerations and fiscal implications)	0	--	++
Improves the efficiency and effectiveness of MSD’s administration of assistance (providing the right assistance to people in a timely way at a reasonable cost)	0	--	+
Safeguards MSD’s use of ADM (client interests and rights are safeguarded and potential negative impacts mitigated)	0	--	++
Improves certainty for future planning	0	--	++
Overall assessment	0	--	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

50. Option Three is recommended. It would best meet the policy objectives and would provide authorisation for the use of ADM across the full ambit of MSD operations.

Key for qualitative judgements:

- ++ much better than status quo/doing nothing
- + better than status quo/doing nothing
- 0 about the same as status quo/doing nothing
- worse than status quo/doing nothing
- much worse than status quo/doing nothing

Section 2.2: Automation of discretionary review powers

51. This section discusses the other part of MSD’s proposed two-part legislative solution

§ 9(2)(h) [Redacted]
[Redacted]
[Redacted] They are:

- Mandatory Reviews
- End of School Year Process
- Medical Reviews.

52. MSD notes that Cabinet has recently made decisions regarding some of the ADM mandatory review processes for specified benefits [CAB-25-MIN-0014 refers]. These processes are being progressed separately through the cost-savings initiative work to recognise housing contributions from all boarders (the Boarders’ Contribution Initiative work).²²

53. For the avoidance of confusion, the below table explains which specified benefits are covered in the proposals in this RIS, and the ones that are being covered through the Boarders’ Contribution Initiative work:

Table: Specified benefits covered in this RIS and the Boarders’ Contribution Initiative work

Specified benefits covered in this RIS	Specified benefits covered in the Boarders’ Contribution Initiative work
<ul style="list-style-type: none"> • Childcare Subsidy • Out of School Care and Recreation Subsidy • Orphan’s Benefit • Unsupported Child’s Benefit • Widow’s Benefit, Orphan’s Benefit, and Supported Living Payment Overseas • New Zealand Superannuation or Veteran’s Pension clients who are residing overseas or travelling 	<ul style="list-style-type: none"> • Supported Living Payment including caring²³ • Emergency Benefit and Allowance with an expiry longer than 52 weeks or no expiry • Accommodation Supplement • Disability Allowance • New Zealand Superannuation with a Non-Qualified Partner

54. The categories mentioned in paragraph 51 relate to MSD’s current practice of using discretionary review powers to decide to automatically review, request information, and for some processes then suspend and cancel assistance, if a client does not respond.

§ 9(2)(h) [Redacted]
[Redacted]

55. In the analysis that follows for remediation options for each category, the following criteria have been used:

- § 9(2)(h) [Redacted]
- feasible to implement (including timing considerations and fiscal implications)

²² This includes all clients who receive Supported Living Payment, Emergency Benefit and Emergency Maintenance Allowance with an expiry date longer than 52 weeks or no expiry, all clients who receive Accommodation Supplement, all clients who receive Disability Allowance, New Zealand Superannuation clients with a Non-Qualified Partner.

²³ Supported Living Payment if it is granted on the grounds that the primary client is permanently and severely restricted in their capacity for work or totally blind, or caring for a person who requires full-time care and attention.

- improves the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)
- clients are more likely to be paid the correct entitlement.

What objectives are sought in relation to the policy problem?

56. MSD seeks to ensure clear legislative authority to use ADM for the above-mentioned processes. s 9(2)(h) MSD also seeks to maintain the efficiencies gained by using ADM in existing processes, and amend the above-mentioned processes where appropriate to improve upon existing efficiencies. Further, MSD also seeks to ensure that clients are paid their correct entitlement.

Mandatory Reviews

Status Quo

57. MSD currently uses the discretionary review powers under sections 304 to 306 of the Social Security Act 2018 (the SSA) to decide to automatically:
- commence a review of a specified benefit²⁴ that a client receives
 - request information from clients
 - suspend and cancel assistance, if the client does not complete the review.
58. The review process described in paragraph 57 generally occurs every 52 weeks (annual review).
59. s 9(2)(h)

What options are being considered?

Option 1: Amend legislation to allow MSD to introduce mandatory review for specified benefits which is administered using ADM

60. This option would involve amending legislation to introduce a requirement that MSD reviews specified benefits at least once every 52 weeks (mandatory review). The review will ask clients to confirm the information MSD holds about their circumstances so MSD can ensure the client is still eligible and is receiving the right rate of assistance. Clients could complete this form online, via the contact centre, at a service centre or by posting a paper form.
61. There would not be a requirement that clients must provide verification of their circumstances, however, MSD can still review and request information from clients under current review powers.
62. A client's review date (the date they must respond to the review by) is 52 weeks since their last review, or 52 weeks since their commencement date if they are yet to have a review. Clients will be notified about their review at least 20 working days before their review date.
63. A client must respond to their review by their review date and if they are still eligible, then their benefit would continue. MSD will action any change in rate or eligibility as a

²⁴ This includes all clients who receive Childcare Subsidy, Out of School Care and Recreation Subsidy, Orphan's Benefit, Unsupported Child's Benefit, as well as Widow's benefit, Orphan's Benefit, and Supported Living Payment clients who are living Overseas (apart from those in the United Kingdom or Australia), and New Zealand Superannuation, or Veteran's Pension clients who are overseas for more than 26 weeks (apart from those in the United Kingdom or Australia).

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result of a change in circumstances. If the client does not respond to their review, their assistance would be stopped on their review date.

64. Some clients will have circumstances which prevent them from responding to their mandatory review. MSD proposes to introduce legislative amendments to allow MSD to implement:

- exceptions where MSD would not be required to review a group of clients and/or a group of clients would not be required to respond to a review – these clients would not be required to respond to a review while they are experiencing specific circumstances or situations, for example:
 - The client is in hospital for more than 13 weeks.
 - The client is in residential disability care or rest home care.
 - A major system outage that prevents MSD and/or clients from meeting the review requirements.
 - The client resides in, or is present in, and cannot reasonably leave, an area in respect of which a state of local or national emergency is in force.
 - An outbreak of a quarantinable disease in respect of which an epidemic notice has been given and is in force in the area that the client resides in or is present in and cannot reasonably leave.
- exemptions where MSD can exempt an individual client from a mandatory review for that review date when a client contacts MSD, and MSD is satisfied that the client is not able to respond to the review even if they had more time (their next review would take place 52 weeks later)
- extensions where a review date can be extended by up to 20 working days if MSD determines a client needs more time to respond to the review.

65. This option also includes the ability to move the review date 52 weeks into the future when a client has a suitable engagement that checks and confirms the same circumstances that their mandatory review would have.

66. As part of this option ADM will be used to:

- trigger the review,
- suspend and cancel assistance, if the client does not complete the review, and
- process the review if the client confirms that the information presented to them is correct.

§ 9(2)(h)

67. § 9(2)(h)

Will this option be feasible to implement (including timing considerations and fiscal implications)?

68. There will be IT costs associated with this option. These costs are related to developing the ability to complete the review online, updating systems to be able to automatically process the review if a client declares they have no change in circumstance, and for redesigning the review form.

Does this option improve the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)?

69. Enabling clients to confirm the information MSD holds about their circumstances is correct will allow for efficiencies in MSD's processing of these reviews. Allowing clients to use online channels to respond to this review will further improve the efficiency of MSD's administration of these benefits.

Are clients more likely to be paid the correct entitlement?

70. As these benefits are already reviewed annually as part of current practice, this option would not increase the likelihood that clients will be paid the correct entitlement as compared to status quo.

Option 2: Turn off annual reviews of specified benefits

71. This option would involve turning off annual reviews for clients getting the specified benefits. MSD would no longer review clients' specified benefit every 52 weeks. Clients would still be obligated under section 113 of the SSA to inform MSD of any changes in their circumstances. MSD would still retain the ability to undertake reviews using the discretionary review powers under the SSA.

s 9(2)(h)

72. s 9(2)(h)

73. s 9(2)(h)

Will this option be feasible to implement (including timing considerations and fiscal implications)?

74. Stopping annual reviews would take considerable time and resources to achieve due to the complex nature of MSD's systems. This would involve changes to IT systems that will incur costs. MSD would be unable to progress these changes without additional funding.

75. Stopping annual reviews will also lead to an increase in ongoing Benefits or Related Expenses (BoRE) costs as MSD would not be regularly reviewing eligibility at a cohort level, resulting in a higher rate of clients receiving support that they may not be eligible for.

Does this option improve the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)?

76. Under this option there are no changes to the efficiencies of MSD's administration of assistance. Staff would be processing change of circumstances as business as usual.

Are clients more likely to be paid the correct entitlement?

77. Stopping annual reviews would mean that clients remain responsible for contacting us when their circumstances change. As some clients may not inform us when their circumstances change, MSD would be at a greater risk of paying clients an incorrect entitlement.

BUDGET SENSITIVE

How do the options compare to the status quo?

	Status Quo	Option 1: Amend legislation to allow MSD to introduce mandatory review for specified benefits which is administered using ADM	Option 2: Turn off annual reviews of specified benefits
s 9(2)(h)			
Feasible to implement (including timing considerations and fiscal implications)	0	+	--
Improves the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)	0	+	0
Clients are more likely to be paid the correct entitlement	0	0	--
Overall assessment	0	++	--

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

78. Option 1 is recommended. As indicated in the above table, it aligns with the criteria and would meet the policy objectives sought.

Key for qualitative judgements:

- ++** much better than status quo/doing nothing
- +** better than status quo/doing nothing
- 0** about the same as status quo/doing nothing
- worse than status quo/doing nothing
- much worse than status quo/doing nothing

End of School Year

Status Quo

79. Dependent children can continue to be included in their caregiver's benefit after their 18th birthday if they continue to be in education and are not financially independent.
80. Currently, MSD notifies the caregiver prior to a child's 18th birthday, requesting that the caregiver advises if the child is still in education and is not financially independent.
81. If the client does not respond, the child continues to be included in their caregiver's benefit until 31 December of the year the child turns 18, as it is assumed that the child is still dependent on their caregiver.
82. MSD currently automates the decision to continue to include a child in their caregiver's benefit when they turn 18 if no information is provided. This decision is made without confirming if the child is still in school or is financially independent § 9(2)(h)

What options are being considered?

Option 1: Amend legislation to allow MSD to automatically review a caregiver's benefit before an included child turns 18

83. Under this option, legislation would be amended to allow MSD to automatically review a caregiver's benefit before an included child turns 18, and request information to determine if the child is still in education, and if they are financially dependent on their caregiver. In response to the request:
 - if a client contacts MSD, MSD will determine if the child should continue to be included on their caregiver's benefit and for how long based on the information provided by the client.²⁵
 - if a client does not contact MSD within a specified period, automation will be used to exclude a child once they turn 18.
84. This option allows MSD to utilise ADM for the rules-based administrative task (automatically excluding a child if the client does not contact MSD) and prioritise using staff for the parts of the End of School Year process that require discretionary decisions to be made (determining how long a child will remain on a caregiver's benefit if MSD receives information from the client).

§ 9(2)(h)

85. § 9(2)(h)

Will this option be feasible to implement (including timing considerations and fiscal implications)?

86. This option would require some changes to MSD's IT systems. The implementation of these changes will have associated costs for IT investments. This cost could be offset by the forecasted savings over five years (see the Implementation section).

²⁵ Up to 31 December of the year the child turns 18.

Does this option improve the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)?

- 87. This option might be less efficient than the status quo as MSD would be requiring staff to make a decision for how long a child would be continued on a caregiver's benefit instead of automatically continuing the child on the caregiver's benefit.
- 88. Allowing rules-based decisions to be made using ADM would enable staff to continue to focus time on the part of the End of School Year process that requires a discretionary decision.

Are clients more likely to be paid the correct entitlement?

- 89. Automatically excluding a child from a caregiver's benefit when MSD does not receive information on the child's circumstances would improve the likelihood that a client is paid the correct entitlement. Legislating for the use of ADM would mean that MSD is being proactive in ensuring that a child is still able to be included in their caregiver's benefit. This would likely result in fewer clients being overpaid after their child is no longer considered to be a dependent child.

Option 2: Stop the automatic continuation of a child on their caregiver's benefit and add a staff member to trigger and complete the review

- 90. The process could be remediated by adding a staff member to manually review every applicable caregiver's benefit to:
 - exclude a child on their 18th birthday from their caregiver's benefit, or
 - continue to include a child in their caregiver's benefit from their 18th birthday up to a date they determine (up until the payday after 31 December of the year in which the child turns 18 at the latest).

s 9(2)(h)

- 91. s 9(2)(h)

Will this option be feasible to implement (including timing considerations and fiscal implications)?

- 92. It would take a considerable amount of time to remove the automatic continuation of a child on their caregiver's benefit from the End of School Year process. There are costs associated with the removal of ADM from MSD's IT systems. This option would also create additional pressure on frontline staff as MSD would be required to trigger a review every time a child is about to turn 18 and is included on their caregiver's benefit.

Does this option improve the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)?

- 93. Removing ADM from this process would reduce the efficiency with which MSD is currently able to administer the End of School Year process. This would mean that staff would be required to complete large volumes of low-value administrative tasks instead of engaging in high-value employment conversations with our clients.

Are clients more likely to be paid the correct entitlement?

- 94. This option would mean that the End of School Year process would be completed by a staff member. This may lead to more considered determination of how long a child should be included on a caregiver's benefit which may in turn improve the likelihood of a client being paid the correct entitlement as compared to status quo.

BUDGET SENSITIVE

How do the options compare to the status quo?

	Status Quo	Option 1: Amend legislation to allow MSD to automatically review a caregiver's benefit before an included child turns 18	Option 2: Stop the automatic continuation of a child on their caregiver's benefit and add a staff member to trigger and complete the review
s 9(2)(h)			
Feasible to implement (including timing considerations and fiscal implications)	0	+	--
Improves the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)	0	0	--
Clients are more likely to be paid the correct entitlement	0	++	+
Overall assessment	0	++	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

95. Option 1 is recommended. As indicated in the above table, it aligns with the criteria and would meet the policy objectives sought.

Key for qualitative judgements:

- + + much better than status quo/doing nothing
- + better than status quo/doing nothing
- 0 about the same as status quo/doing nothing
- worse than status quo/doing nothing
- - much worse than status quo/doing nothing

Medical Reviews

Status Quo

96. Information from a medical certificate or other relevant medical assessments is used to help confirm a client's eligibility for assistance granted on medical grounds, i.e. Jobseeker Support on the grounds of a health condition, injury or disability (JS-HCID), all Supported Living Payment (SLP) clients and carers, Disability Allowance (DA), and Child Disability Allowance (CDA).²⁶
97. Benefits granted on medical grounds are generally reviewed based on the information provided by a prescribed health practitioner.²⁷ Some clients have medical certificates which expire (based on an expiry date recommended by a health practitioner in relation to their health condition, injury or disability) and are required to provide a subsequent certificate to confirm their ongoing eligibility for their benefit.
98. Ahead of a medical certificate's expiry for JS-HCID, SLP, DA or CDA, MSD automatically:
- requests a subsequent medical certificate or other relevant medical assessment, and
 - stops their benefit after a specific period of time (if a client does not provide the requested evidence).
99. MSD's powers to review a benefit and request a subsequent medical certificate or other relevant medical assessment for JS-HCID, SLP, CDA and DA are discretionary, s 9(2)(h)
100. If there are no changes in the details of their medical condition between the previous medical certificate and the new medical certificate, MSD currently automatically processes a new medical certificate and adds a new medical certificate expiry date.

What options are being considered?

Option 1: Amend legislation to allow MSD to use automated decisions to request a subsequent medical certificate

101. This option would amend legislation to enable MSD to:
- use ADM to request a subsequent medical certificate or other relevant medical assessment when a client's current certificate is about to expire, e.g. the medical review date is approaching.
 - stop a client's assistance (after a specified period of time) if a medical certificate or equivalent is not provided, or the client does not contact MSD with satisfactory reasoning as to why they cannot provide the requested evidence, and
 - for JS-HCID clients, automatically add a new medical certificate expiry date if the details of their medical condition match the previous medical certificate.
102. All other medical certificates or equivalent relevant assessments (if applicable) received for other assistance types (SLP, CDA, and DA) will be assessed by MSD staff to determine if the client continues to be eligible, or if their rate of entitlement is correct.

²⁶ Noting that for SLP and CDA, clients can provide other evidence, any suitable assessment instead of a medical certificate, e.g. a specialist report for SLP or child attends a specialist school for CDA.

²⁷ Some medical certificates identify a permanent condition that require no further review of a client's eligibility (SLP, DA or CDA) or capacity for work, so subsequent certificates are not required by MSD. About a third of SLP recipients are never reassessed.

The staff member's assessment will not override the medical certificate expiry dates recommended by a health practitioner in the medical certificate.

§ 9(2)(h)

103. § 9(2)(h)

Will this option be feasible to implement (including timing considerations and fiscal implications)?

104. As this option is already current practice, no operational changes would need to be made.

Does this option improve the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)?

105. This option retains the efficiency from using ADM as part of the medical reviews process.

Are clients more likely to be paid the correct entitlement?

106. There would be no change to the likelihood that clients will be paid the correct entitlement, as this option maintains the current practice.

Option 2: Remove automatic requests for a subsequent medical certificate and require a staff member to process medical certificate expiries

107. Another option to remediate the medical review processes could be through a staff member making the decision to:

- request a subsequent medical certificate, then
- stop the benefit if a client does not provide the requested evidence before the expiry date, and
- for JS-HCID clients, add a future medical certificate expiry date if a client provides a subsequent medical certificate.

§ 9(2)(h)

108. § 9(2)(h)

Will this option be feasible to implement (including timing considerations and fiscal implications)?

109. This option would involve removing ADM from the above-mentioned processes. These changes would likely take a long time to implement and would involve multiple changes to MSD's systems and staff practices. This option would also have a large impact on staff capacity. Over 400,000 Work Capacity Medical Certificates were processed for JS-HCID between 1 August 2023 and 31 July 2024. More FTE resources would be required to manage the workload if MSD removes ADM, resulting in high costs.

Does this option improve the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)?

110. Implementing this option would result in high costs for system changes, and high ongoing costs for additional resources to make up for the loss of efficiency due to removing ADM.

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111. This would mean staff would be required to carry out low-value administrative tasks (such as sending letters manually and manually suspending a client's benefit), instead of focusing on high-value employment conversations with clients.

Are clients more likely to be paid the correct entitlement?

112. A shift to manual processing would result in delays in processing of reviews for medical certificate expiries. Delays may mean that MSD is unable to confirm entitlement in a timely matter, potentially resulting in clients receiving benefits without meeting the medical criteria, or in clients receiving the incorrect entitlement.

BUDGET SENSITIVE

How do the options compare to the status quo?

	Status Quo	Option 1: Amend legislation to allow MSD to use automated decisions to request a subsequent medical certificate	Option 2: Remove automatic requests for a subsequent medical certificate and require a staff member to process medical certificate expiries
s 9(2)(h)			
Feasible to implement (including timing considerations and fiscal implications)	0	++	--
Improves the efficiency of MSD's administration of assistance (MSD is able to administer benefits efficiently and allow for FTE to focus on high-value employment conversations)	0	0	--
Clients are more likely to be paid the correct entitlement	0	0	-
Overall assessment	0	++	--

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

113. Option 1 is recommended. As indicated in the above table, it aligns with the criteria and would meet the policy objectives sought.

Key for qualitative judgements:

- + + much better than status quo/doing nothing
- + better than status quo/doing nothing
- 0 about the same as status quo/doing nothing
- worse than status quo/doing nothing
- - much worse than status quo/doing nothing

How will the new arrangements be monitored, evaluated, and reviewed?

120. The vehicle for monitoring, evaluation, and reviews of these proposals would either be through, or align with, the ADM Standard. Compliance with the ADM Standard must be verified for all new uses of ADM through risk assessments using MSD's PHRaE process. This risk assessment takes place at the time of ADM being proposed. The ADM Standard is designed to evolve to ensure any current issues are picked up during implementation. Regular monitoring must be carried out to ensure that ADM continues to produce expected results, and to ensure that unintended bias and discrimination are reduced as much as possible, with the frequency of monitoring depending on the risk profile of ADM within the process.
121. 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 ADM that is approved under the Standard continues to meet the requirements of the Standard.

Appendix 1: MSD's Automated Decision-Making Standard

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

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(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 MSD’s use of Automated Decision-Making

MSD’s Automated Decision-Making (ADM) Standard provides safeguards covering a range of areas including transparency and human oversight

The ADM Standard incorporates 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. The Standard requires that MSD has taken sufficient steps to manage unintended bias or discrimination, is transparent with clients about its use of ADM, and is maintaining human oversight by providing channels for public inquiries or for challenging automated decisions. A summary of the safeguards provided by the Standard has been set out in the table below:

Table: 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 and compliance reviews must be carried out to ensure that the approved ADM continues to meet the requirements of the Standard. This process is overseen by the Information, Security and Identity Group’s assurance function.

Development of the Standard itself is subject to safeguards

Since 1 July 2023, development of the Standard (in respect of MSD’s use of ADM for the treatment of some child support payments) is subject to certain safeguarding provisions.²⁹ For example, MSD is statutorily required to consult with the Privacy Commissioner when developing or amending the Standard. The SSA also requires that the Standard must be published on the Gazette and on MSD’s website to ensure public transparency about the use of ADM for the treatment of some child support payments. A summary of these safeguards has been set out in the below table:

Table: 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).
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 to commence in March 2025.
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 the treatment of some child support payments (based on an approved information sharing agreement between MSD and the Inland Revenue Department).

There are additional safeguards for MSD’s use of ADM for the treatment of some child support payments

Since 1 July 2023, MSD’s use of ADM for the treatment of some child support payments is also subject to additional legislative safeguards (in addition to the safeguards specifically provided by the ADM Standard). 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 the below table:

Table: 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.

²⁹ As part of the Child Support (Pass On) Acts Amendment Act 2023, which amended the Child Support Act 1991 and the SSA 2018 and included a set of ADM legislative provisions (sections 363A to 363D of the SSA) targeted solely to MSD’s use of ADM in respect of the treatment of some child support payments.

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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), subject to any relevant exceptions.

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.

Appendix 3: Discarded options

Options that were considered for achieving clear legislative authority for the Ministry of Social Development's (MSD) use of Automated Decision-Making (ADM) but were discarded

- **Amending sections 363A–D of the Social Security Act 2018 (the SSA) to authorise the use of ADM for decisions made under just the SSA and associated secondary legislation.** This option was discarded as it would only partially meet MSD's objectives because MSD makes decisions under not just the SSA but also under a broad range of Acts, secondary legislation, and non-legislative sources of authority.
- **Amending the SSA and any other Acts that MSD administers assistance on behalf of other agencies to include the ADM authorising provisions (including to cover associated secondary legislation).** While this option would largely meet MSD's objectives, it was discarded as it would require amendments to multiple Acts. It also carries risks and weaknesses, including not covering decisions made under non-legislative sources of authority.
- **An all-of-government enabling legislation for the public sector's use of ADM.** This option was discarded because MSD has a current need for clear legislative authority while any all-of-government solution would likely require a long time to undertake policy work and progress a solution that may not necessarily address all the matters of interest to MSD (including addressing the issue of what safeguards apply in what circumstances). While MSD does not have the mandate to lead work on cross-government provisions, it is committed to actively supporting any all-of-government initiatives to ensure alignment in agencies' approaches and to maximise efficiencies in safeguarding and monitoring the uses of ADM.

Option that was discarded for Mandatory Reviews

- **Turn off ADM and require a person to process each review.** Under this option, MSD would amend legislation to require specified benefits to be reviewed every 52 weeks but would turn off ADM in this process. This option was discarded as MSD would not be able to employ the high number of FTE required to process these reviews.

Options that were considered for strengthening safeguards for MSD's use of ADM

Four options to strengthen MSD's existing safeguards were explored and assessed against criteria such as flexibility to respond to emergent changes, time and legislative changes required to implement, administrative feasibility, and cost and compliance burden. In comparison to current safeguards, these options would not meaningfully support flexibility and feasibility among other factors. The status quo (MSD's existing safeguards) appropriately balances 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. The benefit of any additional measures would be achieved if they were applied uniformly as part of a wider all-of-government approach involving all public agencies using similar technological tools for decision-making.

- **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. It also requires MSD to make publicly available a list of decisions that are made using ADM as soon as reasonably practical after they have been assessed and approved against the ADM Standard. This option would further list every ADM process in either primary or secondary legislation. However,

this 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 administratively burdensome, and it will only become increasingly more challenging over time as MSD's use of ADM expands under the ongoing multi-year Te Pae Tawhiti transformation programme (which seeks to modernise MSD's operating model).

- **Legislation being more prescriptive.** Legislation already prescribes 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. This option would involve legislation being more prescriptive about the Standard, for example, by incorporating key principles of the Standard in legislation. However, as ADM sits in a rapidly emerging technological space, this option would reduce the flexibility to adjust to evolving changes to technology and understanding of ADM at a time when MSD is developing its level of maturity. MSD's ADM 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. This option could also pre-empt the nature of any all-of-government solution, reduce flexibility to align with any all-of-government response that might emerge in due course, and risk the nature of the Standard being interpreted as a legislative instrument rather than an administrative instrument (which is not the intent of the provisions or the Standard).
- **ADM Standard in legislation.** This option would include the entire Standard in either primary or secondary legislation to increase transparency and accountability around MSD's use of ADM. However, this option would further reduce any flexibility to make changes to the Standard to promptly respond to emerging technological changes, or to align with any all-of-government framework that might emerge in due course. 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 clients in terms of transparency. Such a measure 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.
- **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. This option would introduce an external review of compliance of processes with the Standard. However, this option could be challenging to implement due to lack of sufficiently skilled external resource, high costs and compliance burden, and timing constraints. This option would not be an efficient use of resources, nor be proportionate as an agency-specific response. 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.