

13 January 2025

Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

4 National Circuit
BARTON ACT 2600

Dear Automated Decision-Making Reform team,

The Business Council of Australia (BCA) represents over 130 of Australia's leading businesses. Our members include some of Australia's largest banking, telecommunications and technology companies. We champion the role that responsible businesses play in generating sustainable economic growth and advocate for policy settings that are in the national interest.

We welcome this opportunity to provide a submission on the use of automated decision-making (ADM) by government. In principle, we believe the utilisation of ADM can have significant productivity benefits in speeding up decision making. It also can deliver greater consistency and the removal of human bias in decisions.

Please see our responses below to the questions listed in the consultation paper.

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?

While transparency is crucial for public trust, businesses need protection for genuinely sensitive commercial processes and intellectual property that could impact competitive advantage. A balanced approach would require disclosure of high-level algorithmic information and business rules for scrutiny, while protecting specific technical implementations.

A consistent legal framework for ADM should establish clear criteria for what constitutes protected information versus necessary public disclosure requirements.

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

A legal framework should require government websites to clearly document when ADM is being used and explain decision-making processes in plain language that is accessible to all users. Business rules and algorithms should be made available for independent expert scrutiny to ensure accountability and fairness. However, agencies should retain flexibility in how they present technical information to balance transparency with practical implementation.

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

Pre-implementation safeguards must include comprehensive testing for accuracy, bias, and compliance with administrative law principles, particularly around discretionary decision-making that could impact individual rights.

Systems should undergo rigorous validation to ensure they properly implement relevant legislation and policy requirements. This should include risk assessments, along with testing to ensure safeguards don't create unnecessary operational barriers.

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

Core system-level safeguards should include continuous monitoring for algorithmic bias, regular auditing of outcomes, and robust data quality verification processes. This includes the ability for business to quickly elevate issues where problems are identified and a mechanism to pause an ADM system if errors are identified.

There should be clear mechanisms that allow and maintain appropriate human oversight of automated systems.

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

Review rights should be clearly defined and accessible through existing administrative law frameworks, with options for human intervention in complex cases where automated decisions may not capture all relevant factors. Clear escalation pathways should exist for affected individuals to challenge decisions and seek explanation of outcomes. The review process should be efficient and avoid creating unnecessary administrative burden for businesses or government agencies.

The ability for human decision-makers to substitute their own decisions in place of computer-made decisions should be a core functionality. However, the system should balance this safeguard with efficiency by allowing beneficial automated decisions to proceed while referring potentially adverse decisions for human review in high-risk cases.

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

Post-decision safeguards should include both merits review processes and mechanisms to challenge decisions based on evidence of systematic errors or bias in the ADM system. There should be clear timeframes for lodging appeals and requirements for agencies to respond to challenges. The framework should balance the need for robust review processes with practical considerations around business operations and government efficiency.

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?

Agencies should be required to provide clear notification on their websites about the use of ADM systems and how they operate in decision-making processes. Additional notification points should be determined by agencies based on the context and potential impact of decisions on individuals and

businesses. The framework should provide flexibility in timing and method of notifications while ensuring affected parties are adequately informed.

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

Exemptions from ADM safeguards should be limited mostly to national security matters and cases where disclosure would compromise law enforcement operations. Other specific protections for proprietary and commercial information should also be available, with exemptions made based on the nature of the information and processes. The framework should clearly define the criteria and process for seeking exemptions to prevent misuse.

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

A risk-based approach should apply more stringent safeguards to high-risk decisions affecting individual rights and entitlements, particularly in social services and immigration contexts.

The framework should clearly define risk levels and corresponding safeguard requirements to provide certainty for businesses. Regular review of risk classifications should ensure safeguards remain appropriate as technology and business practices evolve.

Thank you for the opportunity to provide a submission. The BCA is happy to expand on this response if required.

Yours sincerely



Mike Bareja

Director Digital Technologies, AI, Cyber and Future Industries

Business Council of Australia