

Privacy Commissioner's submission to the Social Services and Community Committee on the Social Security Amendment Bill (103-1)

1. I am pleased to provide a submission on the Social Security Amendment Bill (the Bill). The Bill makes a number of changes to the welfare system including introducing non-financial sanctions and introducing a 26-week expiry for jobseeker support.
2. The Privacy Act 2020 is New Zealand's main privacy statute. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals. Central to this examination of any proposed legislation is the principle that policy and legislation should be consistent with privacy rights unless there is a good reason (and evidence) to override these rights. Privacy is not an absolute right and limits on individual privacy are necessarily justified in certain circumstances.
3. My comments on the Bill relate to expanding the enabling provisions for the use of automated decision making (ADM) (clauses 52 and 53).
4. I recommend that a review of the Ministry of Social Development's (MSD) ADM Standard takes place before the expanded enabling provisions come into force on 1 July 2025 to ensure that the standard is appropriate and includes the right safeguards for expanded use.

Enabling Provisions for the Use of Automated Decision Making

5. Clause 52 and 53 of the Bill expand the current enabling provisions for the use of ADM for reapplications set out in the Social Security Act 2018 (The Act).¹
6. I acknowledge that the use of ADM can be cost saving and provide significant efficiencies. However, significant privacy risks arise from the use of ADM, and we know from overseas experiences that the use of this technology can create significant harm. These risks include inaccurate outputs, bias, unexplainable decisions and a lack of accountability. Failures in such tools are usually not evenly distributed, perpetuating or exacerbating poor outcomes for disadvantaged communities.
7. An example of how ADM can go wrong is the Australian 'Robodebt' scheme, an automated debt assessment and recovery system that incorrectly issued over 440,000 debts to those receiving government support payments, resulting in a Royal Commission of Inquiry.²
8. The Privacy Act does not expressly address the privacy risks created by ADM tools, and the Privacy Commissioner has for some time recommended that the Privacy Act be amended to include specific protections relating to ADM. This would bring our Privacy

¹ Section 363A, Social Security Act 2018

² <https://robodebt.royalcommission.gov.au/system/files/2023-09/rrc-accessible-full-report.PDF>

Act in line with the EUs General Data Protection Regulation and other privacy law overseas.³

9. Section 363A of the Act enables MSD to use automated electronic systems to make decisions in limited situations. It imposes several requirements including the requirement for MSD to have an approved ADM standard that is reviewed at least once every 3 years.⁴
10. As the ADM standard was gazetted 30 June 2023, this review must take place before 1 July 2026.⁵ However, I note that while the current ADM standard was gazetted in June 2023, it was developed in 2021 to safeguard MSD's use of ADM. To my knowledge, a full review of this standard and associated guidance has not taken place since the standard was developed.
11. Due to the significant risks that ADM presents, expanded use enabled by Clause 52 and 53 of the Bill and the current gap in our current privacy legislation, it is critical that MSD's ADM standard is fit for purpose and appropriately addresses and manages these risks. I **recommend** that the statutory review of the ADM Standard takes place before the new provisions come into force on 1 July 2025 to ensure that the ADM standard allows for the safe use of the technology given the broader enabling provisions.
12. I trust my comments are of use to the Committee. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.

Liz MacPherson



Deputy Privacy Commissioner

10 January 2025

³ Privacy Commissioner's 2023 briefing to the incoming Minister of Justice at page 11, <https://www.privacy.org.nz/assets/New-order/Resources-/Publications/Reports-to-Parliament-and-Government-/BIMs/BIM.pdf>

⁴ Section 363A(6), Social Security Act 2018

⁵ Notice Under the Social Security Act 2018, 2023-212877 <https://gazette.govt.nz/notice/id/2023-sl2877>