In Confidence

Office of the Minister for Social Development and Employment

Chair, Cabinet Social Outcomes Committee

Expanding legislative authority for Automated Decision-Making in the Welfare System

Proposal

1 This paper seeks agreement to expand current legislative requirements to authorise statutory powers and functions, including decision-making, under the Social Security Act 2018 to be delegated to an electronic system to enable the efficient and effective administration of the welfare system, alongside appropriate safeguards.

Relation to government priorities

2 Use of electronic systems to automate various processes and administrative functions, including decision-making, plays a key role in delivering on government targets to have fewer people on the Jobseeker Support benefit (50,000 fewer by 2030). Automating low-risk tasks frees up staff time to focus on employment conversations with clients, ultimately providing more opportunities to discuss work-seeking requirements. Further, this will support the Ministry of Social Development's (MSD) ability to implement government priorities more efficiently in future.

Executive Summary

3 MSD's use of electronic systems, including for automating some decision-making functions, has increased in recent years to cope with demand for financial support and with the aim of better targeting its workforce to more discretionary and valuable supports such as employment support.

4 s 9(2)(h) [redacted]

5 Since July 2023, a limited authorising provision in the Social Security Act 2018 (SSA) has been in place for the use of ADM by MSD in relation to the treatment of some child support payments. This also covers safeguards and the requirement for MSD to have an approved ADM Standard (the Standard) for the use of ADM, which applies to those child support payments. The Standard system is robust and will continue to apply to any new processes that use ADM.

[1] Note that an automated decision is a decision within an automated process where there is no substantial human involvement in making the decision.

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6 I propose that the SSA be amended to authorise the Chief Executive (CE) to approve the use of an automated electronic system to make any decision, exercise any power, comply with any obligation, or carry out any other related action under the SSA, with appropriate[2] safeguards. This would expand MSD's current legislative authority and allow MSD to use ADM more broadly. The provision will be consistent with the authority that other agencies have, for example in the Customs and Excise Act 2018.[3]

7 s 9(2)(h) Remediation decisions will result in net Benefits or Related Expenses (BoRE) savings, and I am progressing this through the Budget 2025 process *[this paragraph contains legal advice and is legally privileged]*.

8 This legislative proposal is approved for the Government's Legislative Programme for 2025 and I am seeking your agreement to issue drafting instructions to the Parliamentary Counsel Office (PCO) to draft amendments to the SSA and associated Regulations to give effect to the policy decisions outlined above.

s 9(2)(h)

9 For MSD, the use of electronic systems, including for automating some decision-making functions, has increased in recent years to cope with demand for financial support and with the aim of better targeting its workforce to more discretionary and value-adding engagements (e.g. employment support).

10 s 9(2)(h)

10.1 s 9(2)(h)

10.2 s 9(2)(h)

[2] The ADM Standard is considered by MSD to be an appropriate safeguard for protecting privacy and individual considerations, and clearly states that MSD is expected to have assurance in place to ensure there is no unfairness of harm in the process (when compared with manual processing).
[3] The Customs and Excise Act 2018 does not have the same requirement for an approved Standard.

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10.3 s 9(2)(h) [redacted]

Currently, there is a limited authorising provision, under legislation enabling Child Support Pass-on, covering the use of Automated Decision-Making by MSD in relation to the treatment of child support payments

11 The Child Support Pass-on (CSPO) Acts Amendment Act 2023 included a set of ADM legislative provisions targeted solely to CSPO. This amended the Child Support Act 1991 and the SSA[4] to enable the use of ADM in respect of the treatment of some child support payments. The Act also introduced legislative safeguards requiring an approved Standard to be in force at all times and for any new use of ADM to be consistent with the Standard. The Standard is robust and will continue to apply to any new processes that use ADM.

12 The safeguarding provisions currently apply to MSD's use of ADM for the treatment of child support payments. s 9(2)(h) [redacted]

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

I propose that the Social Security Act 2018 be amended to expand the current legislative authority to enable MSD to use electronic systems to administer the welfare system more broadly [legally privileged]

14 s 9(2)(h) [redacted]

15 Therefore, I propose that the SSA be amended to authorise the CE to approve the use of an automated electronic system to make any decision, exercise any power, comply with any obligation, or carry out any other related action under the SSA, with appropriate safeguards as set out in the Standard. This will expand the current legislative authority MSD has to use ADM in relation to the treatment of some child

[4] Sections 363A-D

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support payments to allow for all uses of ADM, with appropriate safeguards. This would enable MSD to continue to use ADM in specific instances.

16 A broad-based authorisation in the SSA will authorise the use of ADM across MSD's portfolio responsibilities, whether under other legislation (primary or secondary) or other sources of authority, accompanied by appropriate safeguards. s 9(2)(f)(iv) [redacted]

17 s 9(2)(h) [redacted]

18 There are examples from overseas jurisdictions about harm caused to citizens through improper, inappropriate, or unethical uses of automation and ADM. Risks include biased or incorrect decisions. MSD has been mindful of these examples in recognising the need for safeguards and applying a high standard to our own use of these tools to protect our clients. MSD officials have determined that existing safeguards are fit for purpose. Compliance with the Standard[5] together with other safeguarding provisions provides the public with transparency and confidence that MSD is taking appropriate measures to ensure responsible use of ADM (see **Appendix 1**).

19 MSD officials support the all-of-government approach[6] to the use of ADM, to ensure alignment in agencies' approaches and to maximise efficiencies in safeguarding and monitoring the use of ADM. I do not expect the proposals in this paper will create any inconsistencies with this work.

s 9(2)(h) [redacted]

20 Introducing a clear legislative authority is one part of a two-part solution in strengthening MSD's position in its use of ADM s 9(2)(h) [redacted]

21 Alongside amending the SSA to expand the existing authorising provision to allow for the general use of ADM, I also propose to make some amendments to give effect to the s 9(2)(h) [redacted]

[5] The Standard is approved by the Chief Executive of MSD and must be reviewed at least once every three years. The Standard, and any amendment, revocation, or replacement of the Standard must be approved by MSD, in consultation with the Privacy Commissioner appointed under the Privacy Act 2020.
[6] Examples include the acceleration of the digitisation of government services and developing a work programme on the use of Artificial Intelligence.
[7] s 9(2)(h) [redacted]

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s 9(2)(h)

22 I intend to legislate for the following processes[8] to allow MSD to review, request information, suspend and cancel assistance, when appropriate. These legislative amendments will allow MSD to:

22.1 trigger a review, periodically, for specified benefits that do not expire (benefits include Childcare Subsidy, Out of School Care and Recreation Subsidy, Orphan's Benefit, and Unsupported Child's Benefit);
22.2 stop a client's specified benefit (for the benefit types listed in paragraph 22.1) if they do not complete the review within a specified period;
22.3 continue a client's specified benefit (i.e. using ADM to continue a client's entitlement) if the client completes a review and confirms they have no changes in their circumstances;
22.4 require New Zealand Superannuation or Veteran's Pension clients who are overseas (apart from those in the United Kingdom or Australia) for more than 26 weeks to confirm their circumstances at least once every 52 weeks and stop their assistance in certain circumstances, as part of their overseas payment;
22.5 require Supported Living Payment, Widow's Benefit and Orphan's Benefit clients who are overseas (apart from those in the United Kingdom or Australia) to confirm their circumstances at least once every 52 weeks and stop their assistance in certain circumstances, as part of their overseas payment;
22.6 where appropriate, request medical certificates, or other relevant medical assessments, and stop a client's assistance in certain circumstances;
22.7 process Work Capacity Medical Certificates for clients receiving Jobseeker Support on the grounds of a health condition, injury or disability if the client has not had any change in their health condition, injury or disability; and
22.8 review a caregiver's benefit before an included child turns 18 and remove the child from the benefit if the caregiver does not complete the review within a specified period.

23 I note there may be exceptions to all the above rules, where MSD would not be required to review a group of clients (e.g. clients in hospital for more than 13 weeks) and exemptions from the review or extensions to the timeframe for individual clients in specific circumstances. There also may be further decisions needed to refine detail of how these processes will work in practice. Therefore, I am seeking your authorisation for delegated authority to make the final detailed decisions necessary to finalise drafting instructions.

Implementation

24 I intend for this Bill to be introduced in August 2025, with commencement in July 2026. Implementation of some of the remediation decisions will be staggered after the commencement date to minimise capacity constraints.

[8] Includes Mandatory Reviews, Medical Reviews, and the End of School Year process.

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Cost-of-living Implications

25 This proposal is unlikely to have any direct impacts on the cost of living.

Financial Implications

26 s 9(2)(h) are expected to lead to operating savings (total of $229.738 million[9] over five years net of any operational costs) and capital savings ($1.698 million over ten years for recoverable assistance). I propose using $51.033 million of the operating savings to offset the impacts of the changes on frontline staff. This will enable MSD to invest in frontline FTE to manage increased client demand. There are also costs associated with the IT system changes (operating expenses of $4.924 million and capital expenses of $8.464 million). The savings and associated transfers are being progressed through Budget 2025.

The figure $229.738m is incorrect and should be read as $157.878m which was included in Budget 25.

Legislative Implications

27 This paper proposes to amend the SSA to expand existing legislative authority to automate the exercise of statutory powers and functions, including decision making. I also propose to amend the SSA, and associated regulations, to give effect to remediation decisions related to automatic reviews, suspensions, and cancellations.

28 This proposal is approved for the Government's Legislative Programme for 2025 and I am seeking your agreement in principle to issue drafting instructions to PCO in order to introduce the Bill in 2025.

Impact Analysis

Regulatory Impact Statement

29 A Regulatory Impact Statement has been completed and is attached in **Appendix 2**.

30 The Regulatory Impact Statement was reviewed by a panel of representatives from the Ministry of Social Development. It received a 'partially meets' rating against the quality assurance criteria. This assessment recognised the limitations on modelling undertaken and the limited consultation with the public on the proposals.

Climate Implications of Policy Assessment

31 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

32 If not used appropriately, ADM processes have the potential to produce (or reproduce) disparities and inequalities for certain groups, such as for Māori and

[9] Note that the total savings listed are a combined total and also include the ADM mandatory review processes being progressed through the cost-savings initiative work to recognise housing contributions from all boarders (the Boarders' contribution initiative work).

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disabled people. To mitigate any potential negative impacts on specific population groups, safeguards will be implemented. The Standard outlines appropriate safeguards to address areas of concern. For example, the Standard is intended to mitigate or eliminate bias and discrimination. On balance, I do not expect any group will be disproportionately impacted by these proposals. MSD has submitted a Regulatory Impact Statement that further outlines the population impacts.

Human Rights

33 This proposal is unlikely to have any direct implications for human rights. ADM, when used alongside appropriate safeguards, can assist people in accessing the support they are entitled to. MSD will assess the remediation decisions against MSD's Security, Privacy, Human Rights and Ethics framework. The proposals in this paper are consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of external Resources

34 No external resources (contractors or consultants) were involved in the policy development of these proposals, or the preparation of this Cabinet paper.

Consultation

35 The following agencies were consulted on this Cabinet paper: Crown Law Office, Department of Prime Minister and Cabinet, Government Chief Digital Officer, Inland Revenue, Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry for Regulation, Office of the Privacy Commissioner, Oranga Tamariki, Parliamentary Counsel Office, Public Service Commission, Statistics New Zealand, the Treasury, Veterans' Affairs, and Whaikaha – Ministry of Disabled People.

Communications

36 MSD will work to develop a communications strategy for communicating the changes to those affected.

Proactive Release

37 I intend to proactively release this Cabinet paper following Budget 2025 decisions, with redactions made consistent with the Official Information Act 1982.

Recommendations

The Minister for Social Development and Employment recommends that the Committee:

1 **note** there is a limited Automated Decision-Making (ADM) authorising provision under the Social Security Act 2018, and MSD's use of ADM for the treatment of some child support payments is subject to legislative safeguards, including the requirement for MSD to have an approved Standard in force at all times and for any use of ADM to be consistent with the Standard

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2 **agree** that the Social Security Act 2018 be amended to expand the legislative authority for MSD using electronic systems in ADM to administer the welfare system

3 **agree** the future use of automated exercising of statutory powers and functions, including decision-making, will continue to be safeguarded by the Automated Decision-Making Standard through the Social Security Act 2018

4 **agree in principle**, subject to Budget 2025 decisions, that the Social Security Act 2018 and the Social Security Regulations 2018 be amended to give effect to s 9(2)(h) as outlined in paragraph 22 (including Mandatory Reviews, Medical Reviews and the End of School Year process)

5 **authorise** the Minister for Social Development and Employment to take final policy decisions to develop and implement all proposals outlined in this paper

6 **invite** the Minister for Social Development and Employment to issue drafting instructions to the Parliamentary Counsel Office to:

6.1 expand the legislative authority to automate the exercise of statutory powers and functions, including decision making, under the Social Security Act 2018; and

6.2 amend legislation to give effect to s 9(2)(h)

7 **note** that the financial implications for the proposals in this paper will continue to be refined through the Budget 2025 process, but are currently expected to lead to operating savings (total of $229.738 million over five years net of any operational costs) and capital savings ($1.698 million over ten years for recoverable assistance), and are being considered through Budget 2025

The figure $229.738m is incorrect and should be read as $157.878m which was included in Budget 25.

8 **note** the Minister for Social Development and Employment will report to the Cabinet Legislation Committee in due course with a Bill to amend the Social Security Act 2018, and associated regulations, to be introduced in 2025.

Authorised for lodgement

Hon Louise Upston

Minister for Social Development and Employment

Appendices

Appendix One: Automated Decision-Making Standard

Appendix Two: Regulatory Impact Statement

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