

# Automated Decision-Making Reform

15 January 2025

## Recommendations

This submission recommends that:

- > The Attorney General's Department take into account the accountability measures of the *Telecommunications Amendment (SMS Sender ID Register) Act 2024* when designing the ADM framework.
- > The Attorney General's Department introduce pre-implementation risk assessments for ADM systems and processes, taking into account existing models present under the European Union's General Data Protection Regulation.
- > Government agencies and firms be required to disclose information about ADM systems to consumers in an easily accessible and understandable way, providing consumers with the appropriate pathways for escalation, merit review or redress relevant to their circumstances.

## About this submission

The Australian Communications Consumer Action Network (**ACCAN**) is pleased to provide this submission to the Attorney General's Department (**the Department**) on the Automated Decision-Making (**ADM**) Reform consultation. ADM will continue to grow in the future and ACCAN encourages the development of appropriate safeguards for government use.

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**Australian Communications  
Consumer Action Network**

### **Australian Communications Consumer Action Network**

ACCAN is the peak national consumer advocacy organisation for communications working to achieve trusted, accessible, inclusive, affordable and available communications and digital services for all Australians.

## Introduction

ACCAN supports the Department considering the accountability and administrative processes relevant to ADM established in the *Telecommunications Amendment (SMS Sender ID Register) Act 2024 (the Act)*. ACCAN notes that under Section 484J of the Act, the Chair of the Australian Communications and Media Authority (ACMA) may, in writing, arrange for the use, under the Chair's oversight, of computer programs to take administrative action that may, or must, be taken by the ACMA.<sup>1</sup> The Department should examine the value of this section and other relevant sections of the Act to establish fit-for-purpose accountability measures regarding the use of ADM.

In the case of the use of Artificial Intelligence (AI) with ADM systems, ACCAN notes the United Kingdom House of Lords Select Committee on AI noted that 'it is not acceptable to deploy any artificial intelligence system which could have a substantial impact on an individual's life, unless it can generate a full and satisfactory explanation for the decisions it will take'.<sup>2</sup>

## Responses to consultations questions

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

Regarding transparency and ADM, legal scholars argue that:

*Transparency and accountability are related because the transparency of a decision-making process or system is necessary (but not sufficient) for making that process or system accountable.*<sup>3</sup>

To this end, ACCAN considers that consumers must have access to fair and appropriate processes to challenge results from ADM. As the 'alignment of automated government decision-making with rule of law values hinges on the appropriateness of design choices' there is significant merit in ensuring that ADM system design prioritises transparency and accountability.<sup>4</sup>

This may be facilitated through the introduction of pre-implementation risk assessments for ADM systems.<sup>5</sup> Under the General Data Protection Regulation, 'public and private bodies relying on ADM "that is likely to result in a high risk to the rights and freedoms of natural persons" are required to submit a Data Protection Impact Assessment'.<sup>6</sup> ACCAN supports the Department to model risk assessments for ADM systems on those already present in comparative jurisdictions. Additionally, government agencies should publicly report on their use of ADM through established reporting pathways.<sup>7</sup>

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<sup>1</sup> Telecommunications Amendment (SMS sender ID register) Act 2024 (no. 83, 2024) - Schedule 1 s.484J.

<sup>2</sup> Michele Finck 'Automated decision-making and administrative law' (Research Paper, 2020) 14.

<sup>3</sup> Zalnierute, M., Moses, L.B. and Williams, G, 'The rule of law and automation of government decision-making' (2019) 82(3) *The Modern Law Review* 5.

<sup>4</sup> Ibid 3.

<sup>5</sup> Attorney-General's Department, Use of automated decision-making by government (Consultation Paper, November 2024) <[https://consultations.ag.gov.au/integrity/adm/user\\_uploads/consultation-paper-use-of-automated-decision-making-by-government.pdf](https://consultations.ag.gov.au/integrity/adm/user_uploads/consultation-paper-use-of-automated-decision-making-by-government.pdf)>.

<sup>6</sup> Anna Huggins, 'Addressing disconnection: automated decision-making, administrative law and regulatory reform' (2021) 44(3) *The University of New South Wales Law Journal* 1075.

<sup>7</sup> Attorney-General's Department, Use of automated decision-making by government (Consultation Paper, November 2024) <[https://consultations.ag.gov.au/integrity/adm/user\\_uploads/consultation-paper-use-of-automated-decision-making-by-government.pdf](https://consultations.ag.gov.au/integrity/adm/user_uploads/consultation-paper-use-of-automated-decision-making-by-government.pdf)>.

## **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?**

Where consumers are provided with the outputs of an ADM system they should be meaningfully notified of the use of ADM. Consumers should then be provided with the appropriate escalation pathways relevant to their circumstances, including internal review by a human person and external review.<sup>8</sup> Additionally, ACCAN considers that prior to the use of consumer data in ADM systems that consumers should be allowed to opt out of their data being used by ADM. The provision of this information recognises that ‘that an individual can only challenge a particular decision or express their view if they understand ‘how it has been made and on what basis’.<sup>9</sup> The absence of such information does not contribute towards facilitating transparency or accountability.

ACCAN would support that government agencies or firms be required to disclose information to affected individuals about the ADM system in an easily accessible and understandable way noting that the disclosure of source code or technical algorithms will not facilitate effective transparency and accountability.<sup>10</sup> Where harm has been experienced by vulnerable consumer cohorts, including consumers with a disability or consumers from culturally and linguistically diverse backgrounds, easily accessible redress pathways are critical to ensuring that consumers receive fair resolution.

## **Conclusion**

ACCAN supports the use of ADM by government agencies and firms to improve consumer outcomes, however, strongly recommends the establishment of appropriate and consumer-focused safeguards to ensure the transparency and accountability of ADM systems and processes. Introducing these safeguards would ensure greater public acceptance of ADM and contribute to greater government efficiency.

The absence of consumer-focused safeguards in the implementation of ADM may risk decreasing trust in government processes and decision making. We thank the Department for the opportunity to submit to this consultation. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact Con Gouskos, Policy Adviser, at [con.gouskos@accan.org.au](mailto:con.gouskos@accan.org.au).

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*The Australian Communications Consumer Action Network (ACCAN) is Australia’s peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers. ACCAN is committed to reconciliation that acknowledges Australia’s past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP.](#)*

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<sup>8</sup> ACCAN, Privacy Act Review Issues Paper (Submission, March 2023)

<https://accan.org.au/files/Submissions/2023/ACCAN%20Submission%20to%20Privacy%20Act%20Review.pdf>.

<sup>9</sup> Anna Huggins, ‘Addressing disconnection: automated decision-making, administrative law and regulatory reform’ (2021) 44(3) *The University of New South Wales Law Journal* 1075.

<sup>10</sup> *Ibid* 1066.