2025-2026

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Automated Decision-Making (Safeguards and Transparency) Bill 2026

EXPLANATORY MEMORANDUM

and

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Circulated by authority of

Kate Chaney MP

Automated Decision-Making (Safeguards and Transparency) Bill

OUTLINE

Automated decision-making (ADM) is increasingly used across the Commonwealth to deliver services at scale. When designed and governed well, ADM can improve efficiency, consistency and timeliness in decision-making. However, without transparency and safeguards, ADM can produce unlawful, incorrect and harmful outcomes that significantly affect Australians' rights, wellbeing and trust in government.

This was experienced by hundreds of thousands of Australians in the Robodebt scheme. It is currently being experienced by older Australians dealing with the opaque automation of aged care package calculations. And it is causing concern amongst Australians living with disability as the Government rolls out automation of critical decisions in the National Disability Insurance Scheme (NDIS).

Australia does not currently have a legislated or mandatory framework governing the use of ADM across government. Existing protections are fragmented, limited and often voluntary. As the use of ADM expands, these gaps create growing risks to legality, fairness, transparency and accountability.

The Bill implements Recommendations 17.1 and 17.2 of the Royal Commission into the Robodebt Scheme by establishing a legislated, mandatory framework for the use of automation to take administrative action, including to make decisions, across Commonwealth departments and agencies.

The framework:

- prohibits certain uses of automation outright, including automation that would be unlawful or that automates the exercise of discretion other than in exceptional circumstances;
- requires a risk assessment before an administrative action is automated, with additional safeguards for automation classified as high risk;
- requires that a person be told when a decision affecting them was automated, and be given a meaningful explanation of the basis for that decision;
- requires human accountability and, for high risk automation, the ability for human decision makers to override the automated decision;
- preserves and reinforces access to internal review, external merits review and judicial review;
- establishes a public register of automated systems; and
- enshrines independent review and audit functions for the Commonwealth Ombudsman to monitor compliance with this ADM framework.

The Bill is designed to minimise the compliance burden on government by ensuring safeguards are proportionate to risk, so that low risk uses of automation are not subject to the same requirements as high risk uses. The Bill does not itself authorise the use of automation to take administrative action; it regulates automation that is otherwise authorised under a Commonwealth law.

FINANCIAL IMPACT

The bill will have no financial impact.

NOTES ON CLAUSES

Part 1—Preliminary

1. **Clause 1 (Short title)** provides that the Act may be cited as the *Automated Decision-Making (Safeguards and Transparency) Act 2026*.

2. **Clause 2 (Commencement)** provides that the whole of the Act commences the day after Royal Assent. Note that specific transitional and delayed application provisions are separately dealt with in Part 7 of the Bill (see clauses 39 to 43 below), so that, notwithstanding commencement of the Act on Royal Assent, most obligations under the Act do not take effect until 12 months after commencement (see clause 40).

3. **Clause 3 (Objects of this Act)** sets out the objects of the Act, being to implement Robodebt Royal Commission Recommendations 17.1 and 17.2, to ensure automated administrative action is lawful, accurate, transparent and subject to appropriate human oversight, to ensure affected individuals can understand and seek review of automated administrative action, to ensure that the level of safeguard is proportionate to risk, and to support the Commonwealth in realising the legitimate benefits of automation.

4. **Clause 4 (Simplified outline of this Act)** sets out a simplified outline of the Act.

5. **Clause 5 (This Act binds the Crown)** provides that the Act binds the Crown in right of the Commonwealth.

Part 2—Definitions

6. **Clause 6 (Definitions for this Act)** sets out definitions used throughout the Act, including by cross-reference to the *Public Governance, Performance and Accountability Act 2013* (for "accountable authority", "Commonwealth entity" and "official") and the *Human Rights (Parliamentary Scrutiny) Act 2011* (for "human rights"). The clause also defines "Commonwealth law" broadly, to include an Act and instruments made under an Act or under another instrument that is itself a Commonwealth law. The clause defines "evaluative determination" to mean a discretion being exercised, an evaluative judgement being made, or a state of mind being formed, in alignment with the definition in the *National Disability Insurance Scheme Act 2013*.

7. **Clause 7 (Meaning of *administrative action*)** defines administrative action in alignment with the definition in the *National Disability Insurance Scheme Act 2013.* The definition includes making, or refusing or failing to make, a decision under a Commonwealth law; exercising, or refusing or failing to exercise, a power under a Commonwealth law; performing, or refusing or failing to perform, a function or duty under a Commonwealth law; and doing, or refusing or failing to do, anything (including giving a notice) related to any of the above. This definition is intended to ensure the Act reaches automation of government functions and powers that would not, on a narrow view, constitute a "decision". For example, exercising a power to conduct a hearing or

exercising a power to investigate a matter may not be captured under the definition of "decision", but would be captured under the definition of "administrative action". For example, a Commonwealth law might confer on a decision-maker a power to conduct a hearing before determining a person's entitlement to a disability support payment, including a power to decide what evidence may be considered at that hearing and to adjourn the hearing if further evidence is required. If that power were automated, so that a computer program determined the length of the hearing, the evidence to be admitted, or whether an adjournment should be granted, an applicant could be denied the opportunity to present evidence relevant to their claim, or their claim could be determined on an incomplete record. Considering these administrative actions may have significant impacts on persons, the environment or the community, it is important that the automation of these actions is in scope of the Act. Clauses 14 and 20 will further refine the scope and ensure safeguards and transparency requirements are proportionate to the level of risk they pose.

8. **Clause 8 (Meaning of *automated administrative action*)** provides that an administrative action is automated if it is taken by a computer program, or if a computer program does a thing that is substantially and directly related to the taking of the action. This formulation aligns with the automated decision-making provisions inserted into the *Privacy Act 1988* by the *Privacy and Other Legislation Amendment Act 2024*. The inclusion of action that is substantially and directly related to the taking of an administrative action, rather than confining the definition to action taken by a computer program alone, is intended to ensure that the safeguards and transparency requirements imposed by this Act cannot be avoided merely because a human is formally recorded as having taken the final administrative action. Without this broader formulation, a computer program that generates a recommendation, assessment, or output which a human decision-maker then adopts, with little or no independent judgement of their own, could be characterised as advising or informing a human administrative action, rather than as having taken the action itself, notwithstanding that the computer program is in substance doing almost all of the work involved in reaching that outcome. This formulation is intended to ensure the Act reaches this kind of case. Subclause (3) puts beyond doubt that an administrative action involving an evaluative determination can be "automated" for the purposes of this definition; whether it is lawful to automate such an action is separately addressed by clause 18.

9. **Clause 9 (Meaning of *administrative decision*)** provides that an administrative decision is the making of, or the refusal or failure to make, a decision under Commonwealth law.

10. **Clause 10 (Meaning of *automated decision*)** provides that an administrative decision is automated if it is taken by a computer program, or if a computer program does a thing that is substantially and directly related to the making of the decision. This formulation aligns with the formulation of "automated administrative action", above. Note that the definition of automated administrative action includes automated decisions.

11. **Clause 11 (Meaning of *high risk*)** provides that the automation of an administrative action is high risk once a risk assessment conducted under Division 3 of Part 4 has classified it as high risk and that risk assessment has been published on the CAT Register. The substantive criteria for classification are set out in clause 20.

12. **Clauses 12 and 13 (Meaning of *responsible entity* and *administering Department*)** identify the persons and entities responsible for compliance with the Act in relation to a given administrative action. A "responsible entity" may include the administering Department and its officials, the responsible Minister, and, where relevant, a Commonwealth entity, official, consultant or contractor authorised to take the action, together with the accountable authority of any responsible Commonwealth entity. This means that, in relation to an administrative action taken by a corporate Commonwealth entity (such as the National Disability Insurance Agency), both the entity itself and its portfolio Department may separately be responsible entities under the Act.

Part 3—Scope of this Act

13. **Clause 14 (Which automated administrative action is covered?)** confines the operation of the Act to automated administrative action that has, or could reasonably be expected to have, a legal or similarly significant effect on an individual (including human rights impacts), a legal or similarly significant effect on a person other than an individual, a significant impact on the environment, or a significant effect on the community or a section of the community. This threshold is intended to ensure the Act applies to automation with a genuine capacity to affect rights and interests, while excluding trivial or purely internal automation. For example, the use of Google Search and email would not be in scope. However, the automation of administrative actions that determine eligibility or level of support in aged care, social security or the NDIS would be in scope.

14. **Clause 15 (Interaction with other Commonwealth laws)** provides that, where the Act overrides any other Commonwealth law authorising or otherwise applying to automation of an administrative action, to the extent of any inconsistency.

15. **Clause 16 (This Act does not authorise the automation of administrative action)** clarifies that this Act does not authorise the automation of any administrative actions. Rather, this Act sets guardrails around the automation of administrative actions that are legally authorised independently of this Act.

Part 4—Automating administrative action

<u>Division 1—Preliminary</u>

16. **Clause 17 (Purpose of this Part)** explains that Part 4 sets out requirements applying generally to automated administrative action, with Part 5 imposing additional requirements where the automation is high risk.

<u>Division 2—Core prohibitions</u>

17. **Clause 18 (Core prohibitions on automating administrative action)** prohibits the automation of an administrative action where the automation would be likely to result in unlawful action; where the action requires an evaluative determination (subject to a regulation-making power to except specified actions or determinations); where automation would unduly influence the exercise of a discretion; where a plain English and technical explanation of the automated system's outputs cannot be produced; where the automation would be likely to have an unjustified adverse impact on human rights; or where the automation is likely to have a significant adverse impact on Australia's democratic system or public confidence in government administration. This

clause ensures particularly problematic uses of automation are completely prohibited. This clause introduces an exception to paragraph (2)(b), where an administrative action that requires the making of an evaluative determination can be automated when prescribed by regulations. The intent of this exception is to allow for automation of evaluative determinations in exceptional circumstances where a rapid response is required and where individuals are likely to benefit from the administrative action, like the automation of disaster support payments in the wake of a natural disaster.

18. For example, paragraph (2)(a) would prohibit an automated system that calculates a debt using a method not authorised by the underlying legislation, such as the income-averaging methodology used in the Robodebt scheme, which the Royal Commission into the Robodebt Scheme found did not accord with the requirements of the *Social Security Act 1991*. Paragraph (2)(b) would prohibit an automated system that determines whether an individual's circumstances amount to "special circumstances" warranting a waiver of a debt or an extension of time, since such an assessment requires the exercise of an evaluative judgement about an individual's particular situation, rather than the application of a fixed rule to an objective fact. Paragraph (2)(d) would prohibit the use of an automated system to determine a person's aged care or NDIS support classification where the system cannot produce an explanation of why a particular level of support was calculated for that person, including because the system's internal logic cannot be reconstructed or expressed in a way that a person with relevant technical expertise could assess and verify. Paragraph (2)(e) would prohibit an automated system used to identify individuals for compliance or investigative action where the system's outputs are affected by a protected attribute, such as an automated triage or risk-scoring system that disproportionately selects individuals of a particular age, disability status, or cultural background for investigation, without justification, when compared with the general population subject to that scheme.

Division 3—Risk assessments

19. **Clause 19 (Requirements relating to risk assessments)** provides that an administrative action must not be automated unless a risk assessment has been conducted and published on the CAT Register.

20. **Clause 20 (Risk classifications)** requires every risk assessment to classify automation as either high risk or not high risk, and requires a high risk classification where the administrative action could reasonably be expected to have a significant adverse effect on a person, the community or the environment. For example, automation of the kind used in the Robodebt scheme to calculate and raise welfare debts, or the automated Integrated Assessment Tool used to determine aged care support classifications, or automation of NDIS support package determinations, would be high risk, given the significant effect such automation can have on an individual's income, care, or support. By contrast, automation of a routine, low-stakes administrative function, such as automatically generating a receipt number or scheduling a routine appointment, would not be high risk. Similarly, automation that exclusively produces positive outcomes for individuals, like an automated rebate system, would not be high risk. This risk assessment process ensures that guardrails around automation are proportionate. Automation that is not considered high risk will face only limited safeguard and transparency requirements – allowing the Commonwealth to realise the legitimate efficiency and consistency benefits of automation without facing significant red tape. High risk automation will face a more

significant set of safeguard and transparency requirements, in order to avoid significant adverse impacts on individuals, the community or the environment, like a repeat of the Robodebt scheme.

21. **Clause 21 (Risk assessment to be undertaken in accordance with the regulations)** requires risk assessments to be carried out in accordance with regulations, which must be consistent with clause 20.

22. **Clause 22 (Approval and publication of risk assessments)** requires a completed risk assessment to be approved in writing by the accountable authority of the Department that conducted it. Where a risk assessment classifies automation as high risk, it must be referred to the Ombudsman, who must approve or decline to approve the assessment within 2 months, failing which the assessment is taken to be approved. An approved assessment must be published on the CAT Register.

23. **Clause 23 (Review of risk assessments)** requires periodic review of published risk assessments – within 12 months, and every 12 months thereafter, for high risk classifications, and within 3 years, and every 3 years thereafter, otherwise. A revised assessment is treated as a new risk assessment for the purposes of the Act.

24. **Clause 24 (Removal of risk assessments from the register)** requires the Ombudsman to remove a risk assessment from the CAT Register on request, when it is replaced by a revised assessment, or where it has not been reviewed within the applicable period under clause 23 (18 months for high risk classifications, 3 years and 6 months otherwise).

Division 4—Human accountability, notification and explanation

25. **Clause 25 (Responsible officers)** requires that, before an administrative action is automated, a Commonwealth law must identify an individual who is taken to be the person who took the automated action. This means that for every automated administrative action, there is a human who is considered to be responsible for that action. This provides an important level of human accountability and responsibility for all automation.

26. **Clause 26 (Notification and explanation of automation)** requires that, where a Commonwealth law requires a person to be notified of an administrative action, and that action is automated, the notification must also disclose that the action was automated, how the relevant computer program was involved in the taking of the action, the legal authority for automating it, a meaningful explanation of its basis, the identity of the responsible officer, information about review rights, and information about the CAT Register. Subclause (2) defines what makes an explanation "meaningful", including that it explain the rules and facts applied, identify what would have led to a different outcome, and, on request, include a technical explanation assessable by a person with relevant expertise. This clause introduces an important level of transparency around the use of automation – so those affected understand how and why automation was used, where they can find further information and what their review rights are.

Part 5—High risk automation

Division 1—Preliminary

27. **Clause 27 (Purpose of this Part)** explains that Part 5 imposes additional requirements, on top of those in Part 4, where the automation of an administrative action is high risk. This ensures that for the automation of administrative actions where there could reasonably be expected to be a significant adverse effect on a person, the community or the environment there are more significant safeguard and transparency requirements.

Division 2—Safeguards for high risk automation

28. **Clause 28 (Preparation by administering Department and accountable authority)** requires, before high risk automation may occur, written legal advice that the automation is lawful; the accountable authority's satisfaction, on reasonable grounds, that the automated system will take into account relevant (and only relevant) considerations, will not fetter discretion, will operate consistently with procedural fairness, and will apply the law as in force; testing for accuracy, differential outcomes and edge-case behaviour; and, where a third party supplies or operates the system, a legally enforceable Commonwealth right to obtain information needed for compliance with the Act (noting, under subclause (2), that this right does not exist where the third party may lawfully refuse disclosure on commercial-in-confidence grounds). The Department must also consult people likely to be disproportionately affected, and people who will interact with or administer the system. Records of the legal advice and certification must be retained for a period to be prescribed by regulations.

29. **Clause 29 (Substituting actions)** requires that, before high risk automation may occur, a Commonwealth law must confer power on an individual (including at least one individual who could have taken the original action absent automation) to substitute a different action where satisfied the automated action is not correct or preferable. This ensures that for all high risk automated administrative actions, there must always be an option for a human decision-maker to override and change the administrative action.

30. **Clause 30 (Complaints process)** requires, before high risk automation may occur, a Commonwealth law to provide a complaints process administered by the relevant Department, open to any affected person or responsible entity, requiring acknowledgment within 5 business days and a substantive response within 30 business days. The Ombudsman may require the administering Department to provide information about the operation of the complaints process. This ensures there is a pathway for concerned and negatively impacted individuals to query the automated process.

31. **Clause 31 (Other safeguards prescribed by the regulations)** allows regulations to impose additional requirements on high risk automation, including in relation to substituted actions and complaints processes.

Division 3—Review rights for automated decisions

32. **Clause 32 (Internal merits review)** requires, before high risk automation of decisions may occur, a Commonwealth law to provide an internal review process, initiated on application by an affected person, under which the reviewer must have power to affirm the decision or substitute a new decision, applying a correct-or-preferable standard, considering any relevant information (whether or not available or used at the time of the original decision), and without making use of the computer program used to take the

original decision. Reviews must be completed within 2 weeks for actions prescribed by regulation (where the Minister is satisfied a longer delay may cause serious and irreversible harm) and within 4 weeks otherwise. This safeguard is limited to automated decisions, rather than automated administrative actions broadly. This clause provides those affected by a high risk automated decisions with a simple and rapid internal review process.

33. **Clause 33 (External merits review and judicial review)** requires, before high risk automation of a decision may occur, that a Commonwealth law provide for review of the decision (and any substituted decision) by the Administrative Review Tribunal, and for judicial review under the Administrative Decisions (Judicial Review) Act 1977 or under section 39B of the Judiciary Act 1901. A note confirms that Commonwealth law cannot exclude the High Court's original jurisdiction under paragraph 75(v) of the Constitution. This safeguard is limited to automated decisions, rather than automated administrative actions broadly. This clause provides those affected by a high risk automated decisions with an unambiguous right to merits and judicial review.

Division 4—Transparency

34. **Clause 34 (Publication of information about automation)** requires that, before high risk automation may occur, prescribed information about the automation, including the legal basis, the reasons for automation and for the high risk classification, override arrangements, the responsible officer, and detail of the rules, algorithms, weightings and testing of the system, be entered on the CAT Register and published on the relevant Department's website. Subclause (3) provides a limited exception where publication would undermine the purpose or administration of the relevant legislation, subject to a requirement, under subclauses (4) and (5), that the responsible entity or Department explain its reliance on the exception to the Ombudsman on request, with the Ombudsman able to publish an assessment of that explanation. This adds an important level of transparency around the systems and processes for the automation of high risk administrative actions.

35. **Clause 35 (Record keeping by Commonwealth entities)** requires responsible Commonwealth entities to keep records, for at least 7 years, sufficient to establish compliance with Part 5 by the entity, its accountable authority, its officials, and any consultant or contractor.

36. **Clause 36 (Annual reports by Departments)** requires Departments to include, in their annual reports under the *Public Governance, Performance and Accountability Act 2013*, information on the number and kinds of substituted actions taken in relation to high risk automated actions, and the proportion of high risk automated actions in relation to which a substituting action was taken. This provides a level of transparency around the rate at which automated administrative actions are reviewed and changed by a human, which can provide insight into the accuracy of the automated system.

Part 6—Other matters

37. **Clause 37 (Commonwealth Automated Tools Register)** requires the Ombudsman to establish and maintain the CAT Register, published on the Ombudsman's website and freely available to the public, and provides that the Register must not contain personal information about an individual. This Register provides a central source of information

around high risk automated systems and processes – allowing for appropriate public scrutiny.

38. **Clause 38 (Reviews by the Ombudsman)** empowers the Ombudsman to review an automated administrative system at any time, on the Ombudsman's own initiative or on complaint, and requires the Ombudsman to review a risk-weighted sample of high risk automated administrative systems at least annually, and each such system at least once every 3 years. The Ombudsman's powers and functions in conducting a review are to be prescribed by regulations, which may also provide for the protection of individuals who complain to, or provide information to, the Ombudsman. The Ombudsman must report on each review to the relevant Department, and must provide an annual report to the Minister, accompanied by a report on the adequacy of the Ombudsman's funding for these functions, which the Minister must table, together with the Minister's response, within 3 months. This clause is fundamental to enacting Recommendation 17.2 of the Royal Commission into the Robodebt Scheme, which called for the establishment of a body to monitor and audit automated decision-making.

39. **Clause 39 (Independent statutory reviews)** requires the Minister to cause independent reviews of the operation of the Act, the first within 3 years of commencement and subsequently at 3-yearly intervals, with each review to consider, among other things, whether the criteria for classifying automation as high risk continue to be appropriate. Reports must be tabled in each House within 15 sitting days of receipt. Given the pace at which technology like artificial intelligence is developing, it is appropriate that this Act – which regulates the use of these technologies in the Commonwealth Government – is regularly reviewed to ensure it remains fit-for-purpose and consistent with its Objects.

40. **Clause 40 (Regulations)** confers a standard regulation-making power on the Governor-General, to prescribe matters required or permitted by the Act, or necessary or convenient for carrying out or giving effect to the Act.

Part 7—Transitional arrangements

41. **Clauses 41 to 45** set out transitional arrangements for the commencement of substantive obligations under the Act. Clause 42 provides the general rule that the Act applies to automated administrative action taking place more than 12 months after commencement. Clause 43 provides that the core prohibitions in Division 2 of Part 4 apply from commencement itself, without the 12-month delay. Clause 44 allows risk assessments to be conducted at any time, with the approval, publication and review requirements in clauses 20 to 22 applying to assessments completed on or after commencement. Clause 45 sets out corresponding transitional timing for the Ombudsman's periodic review and annual reporting obligations under clause 38.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Automated Decision-Making (Safeguards and Transparency) Bill

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

The Bill implements Recommendations 17.1 and 17.2 of the Royal Commission into the Robodebt Scheme by establishing a legislated, mandatory framework for the use of automation to take administrative action, including to make decisions, across Commonwealth departments and agencies. The framework:

- prohibits certain uses of automation outright, including automation that would be unlawful or that automates the exercise of discretion other than in exceptional circumstances;
- requires a risk assessment before an administrative action is automated, with additional safeguards for automation classified as high risk;
- requires that a person be told when a decision affecting them was automated, and be given a meaningful explanation of the basis for that decision;
- requires human accountability and, for high risk automation, the ability for human decision makers to override the automated decision;
- preserves and reinforces access to internal review, external merits review and judicial review;
- establishes a public register of automated systems; and
- enshrines independent review and audit functions for the Commonwealth Ombudsman to monitor compliance with this ADM framework.

Human rights implications

The Bill engages the following human rights.

<u>The right to a fair hearing and to an effective remedy</u>

Articles 14(1) and 2(3) of the ICCPR

These rights are engaged because the Bill affects the review of automated decisions, including entitlements to social security and other statutory benefits. **The Bill advances these rights** by requiring notification and a meaningful explanation of automated administrative actions, internal merits review processes for high risk automated decisions and external merits and judicial review processes for high risk automated decisions.

<u>The right to social security and an adequate standard of living</u>

Articles 9 and 11 of the ICESCR

These rights are engaged because the Bill applies to automated administrative actions and decisions determining eligibility for social security, aged care and other Commonwealth payments. **The Bill advances these rights** by ensuring there are appropriate transparency requirements and safeguards around the automation of these decisions and administrative actions.

The right to equality and non-discrimination

Article 26 of the ICCPR, CERD, CEDAW and Article 5 of the CRPD

These rights are engaged because automated systems can produce indirect discrimination, disproportionately affecting a particular group. **The Bill advances these rights** by prohibiting automation likely to have an unjustified impact on human rights and requiring testing for differential outcomes across cohorts before high risk automation is used.

The rights of persons with disability

CRPD Articles 12 and 13

These rights are engaged because automated tools are used in NDIS decisions materially affecting people with disability. **The Bill advances these rights** by ensuring there are appropriate transparency requirements and safeguards around the automation of these decisions and administrative actions.

Conclusion

This Bill is compatible with human rights. It principally advances the rights identified above, in response to the failures identified by the Robodebt Royal Commission. Where it limits a right, that limitation is aimed at a legitimate objective, is rationally connected to it, and is reasonable, necessary and proportionate.

Kate Chaney MP