

# A map of automated decision-making in the NSW Public Sector

*A special report under section 31 of the  
Ombudsman Act 1974.*



Pursuing fairness for  
the people of NSW.

 **Ombudsman**  
New South Wales

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The Hon. Ben Franklin, MLC  
President  
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The Hon. Greg Piper, MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Pursuant to section 31 of the *Ombudsman Act 1974*, I am providing you with a report titled *A map of automated decision-making in the NSW Public Sector*.

I draw your attention to the provision of s 31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make the report public forthwith.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Miller".

Paul Miller

**NSW Ombudsman**

8 March 2024



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## Documents comprised in this Report:

**NSW Ombudsman - Introduction and brief observations**

[Executive Report – Automated decision-making in NSW: Mapping and analysis of the use of ADM systems by state and local governments](#)

[Research Report – Automated decision-making in NSW: Mapping and analysis of the use of ADM systems by state and local governments](#)

[Compendium of ADM systems](#)

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# NSW Ombudsman – Introduction and brief observations

## Contents

<b>The report</b> .....	<b>1</b>
<b>Origins and purpose of the mapping project</b> .....	<b>2</b>
Our 2021 machine technology Report .....	2
The need for greater visibility .....	2
Purpose of the research .....	3
<b>Observations on the mapping process</b> .....	<b>3</b>
Definitional challenges .....	3
The rapidly changing landscape .....	4
Reliance on voluntary reporting .....	5
<b>Observations on the research outcomes</b> .....	<b>6</b>
<b>A note about the Compendium of ADM systems</b> .....	<b>8</b>

This report represents the first attempt in New South Wales, and as far as we are aware in any Australian jurisdiction, to comprehensively identify and publish the ways in which the public sector is using, or planning in the near future to use, automated decision-making (ADM) systems in the performance of their functions.

The research was commissioned by the NSW Ombudsman and undertaken by researchers at the ARC Centre of Excellence for Automated Decision-Making and Society (ADM+S).

## The report

This report incorporates four documents:

- **NSW Ombudsman – Introduction and brief observations** (this document), which we have authored and sets out the background to and context for the research, as well as brief observations concerning its process and outcomes.<sup>1</sup>
- **Executive Report**, which explains the scope of the research, records observations and outlines key insights, and suggests considerations for public servants and policy-makers.<sup>2</sup>

<sup>1</sup> Suggested citation: NSW Ombudsman, *A map of automated decision-making in the public sector: NSW Ombudsman Introduction*, Special Report, NSW Parliament, 8 March 2024.

<sup>2</sup> Suggested citation: Kimberlee Weatherall, Paul Henman, Jose-Miguel Bello y Villarino, Rita Matulionyte, Lyndal Sleep, Melanie Trezise, Jenny Van Der Arend, Scarlet Wilcock, *Executive Report - Automated decision-making in NSW: Mapping and analysis of the use of ADM systems by state and local governments (Research Report)* (ADM+S, 2024).

- **Research Report**, which sets out the research in full: it contextualises the issues, provides more detailed data and analysis, and sets out the research methodology.<sup>3</sup>
- **Compendium of ADM systems**, which is a tabular compilation of the ADM systems reported by NSW public sector agencies and local councils as being currently in use or in development with planned use within 3 years.<sup>4</sup>

The *Executive Report* and the *Research Report* were authored by the research team at ADM+S. Although the NSW Ombudsman provided guidance and support throughout the research, and reviewed and provided comments on various drafts of those documents, the views expressed in them are the views of those researchers, and do not necessarily represent the views of the NSW Ombudsman.

The *Compendium of ADM systems* lists all of the ADM systems that were identified by relevant organisations, either to the research team as part of the ADM+S research project, or subsequently to us – see page 8 below.

## Origins and purpose of the mapping project

### Our 2021 machine technology Report

In November 2021, we tabled our special report in Parliament titled, ‘The new machinery of government: using machine technology in administrative decision-making’ (**2021 report / machine technology report**).<sup>5</sup>

Our 2021 report observed that the use of ADM in the public sector is not new but is rapidly increasing both in its use and in the sophistication of the technology used (including in particular, with rapidly evolving forms of Artificial Intelligence (AI)). We acknowledged that ADM could offer significant potential benefits to agencies and the public, including cost efficiencies, improved accuracy and consistency, better customer experience, and enhanced insights and learning. However, we questioned whether adequate attention was being given to fundamental aspects of public law and good decision-making principles that are applicable to the exercise of statutory and other administrative functions. We noted that these requirements and principles continue to be applicable when those functions are undertaken by or with the support of ADM technologies.

Our 2021 report was intended to fill an important gap by outlining the key issues of concern at the intersection of administrative law and ADM adoption, in a way that we hoped would both improve understanding and compliance by agencies with their administrative law responsibilities, as well as to contribute to public and especially Parliamentary debate about the adoption of ADM technology by government, and its proper limits and regulation.

### The need for greater visibility

Government agencies are not at this time subject to any express obligation to report on their use of ADM in the performance of statutory functions, either publicly (such as on their website by way of open access

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<sup>3</sup> Suggested citation: Kimberlee Weatherall, Paul Henman, Jose-Miguel Bello y Villarino, Rita Matulionyte, Lyndal Sleep, Melanie Trezise, Jenny Van Der Arend, Scarlet Wilcock, *Automated decision-making in NSW: Mapping and analysis of the use of ADM systems by state and local governments (Research Report)* (ADM+S, 2024).

<sup>4</sup> Suggested citation: NSW Ombudsman, ‘Compendium of ADM Systems’ in *A map of automated decision-making in the public sector*, Special Report, NSW Parliament, 8 March 2024.

<sup>5</sup> NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision-making* (Report, November 2021) <[www.ombo.nsw.gov.au/data/assets/pdf\\_file/0003/138207/The-new-machinery-of-government-special-report-Front-section.pdf](http://www.ombo.nsw.gov.au/data/assets/pdf_file/0003/138207/The-new-machinery-of-government-special-report-Front-section.pdf)> (machine technology report).



information under the *Government Information (Public Access) Act 2009*<sup>6</sup> or when providing reasons to individuals affected by decisions that have been made by or with the assistance of ADM tools.

This lack of visibility is, in our view, an inherent concern: we believe that members of the public whose rights and interests have been materially affected by a decision made with the use of ADM are entitled to be informed of the role ADM played in that decision.

Visibility is also instrumentally required – it is necessary so that people can properly consider and exercise any decision review rights; it is necessary for proper oversight (including by bodies such as the Ombudsman); and it is necessary to support an informed debate about what assurance and regulatory frameworks may be appropriate for ADM use now and into the future.

## Purpose of the research

For those reasons, we tasked ourselves following the 2021 report to undertake an initial project seeking ‘to comprehensively map the current and proposed types and uses’ of ADM in the NSW public sector.

In particular, the aim of the project has been to capture a point-in-time snapshot of ADM systems across the sector, including to gain an understanding of what kinds of ADM systems are currently planned for deployment in the public sector over the next 3-year period.

In pursuing this aim, we broadly hoped to contribute to the following:

- Identification of the functions performed by ADM systems in the public sector.
- Greater understanding of how agencies deal with risk associated with ADM use.
- Provision of a reference point for policy-makers and legislators.
- Increased public awareness of automated decision-making.
- Assessing the continued validity of the analysis and guidance provided in our 2021 special report.

## Observations on the mapping process

The Research Report sets out in detail the research methodology for this project, and outlines some of the key challenges and limitations.

Here we highlight three important process challenges, which will be particularly relevant when policy makers consider ‘where to next?’ in terms of how best to ensure appropriate transparency about the use of ADM going forward.

### Definitional challenges

An inherent challenge of the mapping project was how to define ADM. Compounding this challenge is the fact ADM is not the same as the AI which many people have at least some understanding of (putting to one side debate about the definition of ‘AI’).

The project underscored a known challenge in that regard, and the research team took a broad approach to defining the scope of the project – built off a base conceptual definition that was supported by more

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<sup>6</sup> We note that a similar concern has also been raised by the NSW Information and Privacy Commission. See further: Information and Privacy Commission, *Scan of the Artificial Intelligence Regulatory Landscape – Information Access & Privacy* (Report, October 2022) 12-16 <[www.ipc.nsw.gov.au/sites/default/files/2022-11/IPC\\_Scan\\_of\\_the\\_Artificial\\_Intelligence\\_Regulatory\\_Landscape\\_October\\_2022\\_0.pdf](http://www.ipc.nsw.gov.au/sites/default/files/2022-11/IPC_Scan_of_the_Artificial_Intelligence_Regulatory_Landscape_October_2022_0.pdf)>.

practical examples of what is or is not ADM for the purposes of the project. This approach was useful to avoiding becoming distracted by semantic arguments about whether a system is or is not ADM.<sup>7</sup>

An important aspect to resolving definitional challenges was recognising that ADM includes systems that support decision-making in addition to systems that fully automate decision-making processes with minimal or no human intervention. This is important because agencies sometimes erroneously assume that if a human is present at some points in a decision-making process, then the system is not an ADM system and the issues relevant to ADM use, including those we explored in our 2021 report are not relevant.

Some of the use cases in the ADM Compendium will not make a 'decision' and many do not involve fully automated decision-making processes. This is a positive and intentional approach we have taken in the mapping process that contributes to the broader picture of how the government discharges its functions. All use cases are of interest as they are used in the performance of statutory functions or they interact with staff and members of the public, guiding users in ways that support, augment or replace (in whole or in part) the role of individual public officials.

## The rapidly changing landscape

An important feature of the mapping project was that we sought to create a snapshot of ADM systems at a point in time and in a rapidly evolving area. For example, ChatGPT and the burgeoning use of generative AI were not mainstream concepts when we initiated this research.

From the outset we were aware that due to the rapidly changing technology landscape, the currency of the snapshot would diminish quickly. For this reason, we adopted a fairly ambitious project schedule for a whole-of-sector research project. Despite this ambitious timeline, we noted some important updates between the time of initial data collection by the research team to the production of this report.

A small number of use cases that were reported to the researchers (mainly those listed as 'planned') were later reported to us as no longer being under consideration. This highlights an interesting dynamic to how agencies are looking at the use of ADM in exercising their functions. Whilst there is likely a wide range of reasons agencies reported they are no longer considering a particular ADM system, one possibility is the rapidly changing technology landscape is disrupting the normal (orderly) strategic approach to technology planning, development and implementation.

On the other hand, we also noted some use cases progressing from development to implementation in the time elapsed. One such example is Industrial Relations NSW's long service leave digital assistant 'Iris', which launched recently. The tool assists employers and employees by providing information about long service leave entitlements.<sup>8</sup> At the time of the first survey, the Iris tool was in pilot.

One aspect of the Compendium that appears to be unique, even on a global scale, is of its attempt to include systems and tools that are at a planning or conceptual stage of development. These use cases and the research team's analysis contribute to our understanding of the direction of change, including by pointing to the likely pace and breadth of adoption of AI technology in the public sector.

We hope that creating this first snapshot of ADM systems (including instances of AI) will assist Government, Parliament and the public to consider what reporting and regulatory frameworks for ADM use in the public sector may be required going forward.

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<sup>7</sup> See above, n 3, chapter 1 for a detailed explanation of the scope of the project and what ADM is and is not.

<sup>8</sup> Long Service Leave NSW (Web Page) <[www.industrialrelations.nsw.gov.au/employers/nsw-employer-essentials/long-service-leave-entitlement-nsw](http://www.industrialrelations.nsw.gov.au/employers/nsw-employer-essentials/long-service-leave-entitlement-nsw)>.

Although a less complete picture has been obtained in relation to ADM use by local councils, the research suggests that the local council sector has an appetite for the adoption of ADM relevant to their functions but, particularly in non-metropolitan areas, lags public sector agencies in doing so.

Another example highlighting the rapidly changing landscape in this regard is a recent announcement that the Department of Planning, Housing and Infrastructure is investing \$5.6 million in AI to assist councils to reduce workload and streamline development assessments. The Department will evaluate vendor proposals on criteria including alignment with the AI Assurance Framework and AI Ethics Policy. The result will be a list of 'suitable AI products' and 'guidance for councils on how to engage with suppliers and select the best AI tools for the task'.<sup>9</sup> This example also points to an important policy consideration around how the NSW Government can support the local government sector in the responsible development and use of ADM systems into the future.

## Reliance on voluntary reporting

As noted above, this project was undertaken by a university research team commissioned by the NSW Ombudsman. Agencies were invited to participate and provide information about their systems. The purpose of the research was not to investigate possible maladministration, but rather was initiated by us as a collaborative public sector improvement project – in short, an attempt (together with our 2021 machine technology report) to proactively support public sector agencies and policy-makers to give necessary thought and take appropriate steps toward good practice public administration, rather than waiting for instances of maladministration that might warrant complaints to or investigations by the Ombudsman to arise. As such no investigatory or coercive powers were used in this project and participation and information sharing by agencies was entirely voluntarily.

Prior to commencing the research, we engaged with the Secretaries Board (which includes the Secretaries of all departments, as well as the Public Service Commissioner and NSW Police Commissioner) and obtained their support for the project and confirmation of their portfolios' willingness to participate. We also obtained the support of the Office of Local Government (**OLG**) to encourage local councils to consider participating in the research. We are grateful to both the Secretaries Board as well as the OLG for their support for this research.

Despite this welcome high-level support, as the Research Report notes, the voluntary nature of the research meant there were challenges in achieving the aim of the research to provide a *fully complete and comprehensive* map of ADM use across the breadth of the public sector:

- The research team were inherently reliant upon the willingness of agencies to collate and share information, and information provided by agencies was accepted for analysis without independent scrutiny or quality assurance. There were limited avenues to independently validate the information provided for accuracy or completeness.<sup>10</sup>
- It appears that few departments or their portfolios currently have a single business unit with line of sight over all ADM systems in use or development. Accordingly, even with full support and co-operation, the process of identifying and collating ADM systems within agencies themselves was often a challenging and never-before-attempted task. (Interestingly, this points to unexpected tangential benefits of this research: in some cases it is apparent that it has facilitated new

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<sup>9</sup> Department of Planning, Housing and Infrastructure, *NSW Planning wants AI product solutions to make faster development assessments* (Web page) <[www.planning.nsw.gov.au/news/nsw-planning-wants-ai-product-solutions-make-faster-development-assessments](http://www.planning.nsw.gov.au/news/nsw-planning-wants-ai-product-solutions-make-faster-development-assessments)>.

<sup>10</sup> As noted in the Research Report (above n 3), a review of public-facing websites was separately undertaken, to identify potential ADM systems beyond those reported by agencies. However, as also explained in the Research Report, this approach also has significant limitations.

connections and conversations between parts of agencies (such as IT, governance, legal, strategy and operational units) about ADM and AI technology. We hope that these continue beyond this project, noting that the need for multi-disciplinary engagement in ADM was highlighted as a key point in our 2021 report and later in our ADM guidance.<sup>11</sup>)

- Even where agencies had expressed support for the research at head of agency level, the collation and provision of the information to the researchers often required the willing co-operation of various other officials from across the agency, for whom contributing to this research may not have been viewed as their priority task.
- Some agency officials also saw risk in the provision of information for publication with this research, including some suggestions that publishing even just the fact that an ADM system is in existence, or its name, could raise cyber security concerns. We also heard informally from some of those agency officials about a possible reticence to share details of their ADM systems because of a concern that doing so may draw unwanted scrutiny on those systems or calls for the relevant ADM use to cease. (No Secretary ever suggested this as a possible concern, and it was never cited by any agency as a reason for not participating in the research).

Although all NSW Government portfolios engaged with the project to some extent, it is evident that some were more engaged than others. It was disappointing that some agencies, including a small number of departments, did not respond to the researcher's survey.

On the other hand, most agencies did participate thoroughly and generously in the research, and a number of agencies provided extensive effort and support to the research team, including by reviewing draft research surveys and providing example use cases.

We particularly thank those agencies that contributed the more detailed case studies in the research report for their willingness to provide richer information about those systems and where relevant to share learnings that may be useful for other agencies. As with the rest of the report, the case studies reflect the research team's perspective and observations, and we note that at times those may not always be consistent with the agency's own views.

We are also grateful to the many local councils who responded to the research survey.

We hope that all departments, agencies and local councils which have contributed to this research will find the analysis and insights in the report of value, and useful as they continue to consider and pursue their own current and future ADM projects.

## Observations on the research outcomes

We will not repeat the outcomes of the research in this Introduction, which are well summarised in the *Executive Report*.

However, we add the following brief observations:

- **Confirmation of the views we expressed in our 2021 report**  
In our 2021 machine technology report we assumed that public sector ADM use was widespread and that it was, and would continue to be, rapidly increasing. This assumption has been clearly demonstrated by this research. The analysis by the research team also reinforces the relevance and

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<sup>11</sup> See machine technology report, n 5, chapter 11 and NSW Ombudsman, *Automated decision-making in the public sector* (Guidance) <[www.ombo.nsw.gov.au/guidance-for-agencies/automated-decision-making-in-the-public-sector](http://www.ombo.nsw.gov.au/guidance-for-agencies/automated-decision-making-in-the-public-sector)>.

validity of the issues we raised in our 2021 report, which continues to define our views on how ADM systems intersect with public law and administration.

- ***There is increasing availability of information on agency websites, but it is of limited quality***

The Research Report indicates that there is now quite a lot more information in the public domain (and particularly on agency websites) relating to how the NSW public sector is using ADM and AI tools than we had observed to be the case at the time of our 2021 report. However, they also note that where and how the information is published, and what is included, is not consistent. Very few of the systems identified in the research have a corresponding clear public statement (for example on the relevant agency's website) that the ADM system is in use, and in what way.

- ***Publication of information on agency websites may, in some but not all cases, be sufficient to inform members of the public who are affected by decisions made with the support of ADM***

In our 2021 report and related guidance,<sup>12</sup> we said that when an agency gives reasons to an individual affected by an ADM system decision, those reasons must be meaningful, and in addition to the usual requirements for giving reasons, should include:

- that automation was involved
- the extent to which automation was used
- what information is processed by the ADM system
- the date and version of any technology
- how (in lay terms) the technology works.

While we continue to consider that this information should be made available to those affected by ADM, having reflected on the observations in the Research Report, we acknowledge that in some cases it may be appropriate for this information to be provided by way of publication on an agency's website (in a prominent, logical and easy to find location). However, this will not always be sufficient, particularly where decisions have serious impacts on the rights or interests of individuals. Increasing the amount of information about ADM that is generally available in the public domain does not mean that an agency can necessarily assume that members of the community affected by a particular decision will be aware of, understand or accept the role played by technology.

- ***Voluntary reporting will not meet calls for a comprehensive register of ADM (and AI) systems***

The research team has made detailed observations around the challenge of responding to calls for increased transparency such as by way of a 'register' of ADM systems. They provide useful information to consider in terms of what and how information about ADM (and AI) use could be made publicly available. Although this mapping project has produced quite a detailed point-in-time view of ADM usage, we echo the research team's view that voluntary public reporting will not be sufficient to ensure comprehensive and continuing visibility.

- ***Being able to 'see' what ADM is being used is one thing; being assured that it is being used lawfully and in accordance with good administrative practice is another***

In respect of the numerous use cases identified through this project, we do not know in respect of each system how it was designed, legally validated, or tested, and whether and how it is subject to ongoing monitoring for issues such as accuracy and bias. The research report includes some insights – gleaned from more detailed information it sought from some agencies about some of their ADM systems. Agencies in a number of cases reported assessment of ADM systems that include cyber

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<sup>12</sup> See guidance above at n 11.

testing, internal legal advice, privacy impact and risk assessment. However, there was little evidence of any external or independent assessment, such as external audit or external legal review or advice. Of particular concern to us, it was reported that less than half of the ADM systems reported to the research team had any legal input at the design stage.<sup>13</sup> In our 2021 Report, we had identified the need to put in place the right design team as an essential first practical step agencies need to take when considering the adoption of ADM, and we noted that '[h]aving lawyers on the design team is essential'.<sup>14</sup> We also suggested that, given the inherent risks when statutory functions are translated and embedded in the code of automated systems, there should be a thorough legal audit before ADM is implemented.<sup>15</sup>

- **Most of the ADM systems reported through the project are currently not subject to any ADM (or AI) specific regulatory framework.**

(This does not mean they are legally unregulated as our 2021 report makes clear, including by ordinary principles of Administrative Law as well as by relevant statutory regimes, such as privacy laws and anti-discrimination legislation).

Currently, the AI Assurance Framework only applies to the use of 'AI' (which will not capture the broad spectrum of ADM systems), and its requirement for external review by the 'AI review body' only applies in limited circumstances including if the project uses AI and costs more than \$5 million; was funded from the State's Digital Restart Fund; or if the project uses AI and mid-range or higher risks (according to the framework) remain present after mitigations.<sup>16</sup> Many ADM use cases in the Compendium would be excluded from the scope of the framework as they do not utilise AI technologies (as defined), or do not otherwise meet the criteria of the framework. Additionally, the AI Assurance Framework came into effect in March 2022 and does not apply retrospectively. Many of the ADM systems captured through this project have been in use for some time – some for more than a decade. The research project therefore raises an important yet unresolved question about whether and how the revised AI Assurance Framework will impact ADM systems (both already in use and planned).

We note the NSW Government AI Assurance Framework is currently under review.<sup>17</sup>

## A note about the Compendium of ADM systems

The primary research methodology of the research team involved inviting all departments and agencies, as well as local councils to complete a questionnaire (the research survey) in which they identified and provided basic information about any ADM systems in use or in development. Those results were collated into a compendium of (213) ADM systems, which formed the basis of the research outlined in the Research Report.

As noted above, participation in this research by organisations (departments, agencies and local councils) was voluntary, and undertaken strictly in accordance with university ethics approvals.

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<sup>13</sup> See above n 2 (23).

<sup>14</sup> See machine technology report, n 5, chapter 11.

<sup>15</sup> See machine technology report, n 5, chapter 14.

<sup>16</sup> Department of Customer Service, *Artificial Intelligence Assurance Framework* (March 2022) <[www.digital.nsw.gov.au/sites/default/files/2022-09/nsw-government-assurance-framework.pdf](http://www.digital.nsw.gov.au/sites/default/files/2022-09/nsw-government-assurance-framework.pdf)>.

<sup>17</sup> Department of Customer Service, *Legislative Council Inquiry into Artificial Intelligence (AI) in NSW: NSW Government Submission to Portfolio Committee no. 1 – Premier and Finance* (Submission, 28 August 2023) <[www.parliament.nsw.gov.au/lcdocs/submissions/82617/0037%20NSW%20Government.pdf](http://www.parliament.nsw.gov.au/lcdocs/submissions/82617/0037%20NSW%20Government.pdf)>.

The research team were cautious to ensure the academic and ethical integrity of their research. Accordingly, although the research was commissioned by the NSW Ombudsman and was supported by the Secretaries' Board, it was considered imperative that no action be taken (by the Ombudsman or others) that might be, or might be seen to be, pressuring organisations to complete the research survey or questioning the accuracy or completeness of their responses. Accordingly, apart from our role in helping to identify the relevant parts of agencies with whom the researchers should make contact, and reminding departments and agencies of the timeframes for responses, no action was taken by the NSW Ombudsman to elicit responses to the research survey.

However, once that research was completed, the NSW Ombudsman reviewed the responses of organisations that had been collated by the research team.

We noted that there were significant and obvious gaps, including that it appeared a number of principal departments and major agencies had failed to respond to the survey.

In some other cases where departments and agencies provided responses that identified ADM systems in use or development, the descriptions provided were not meaningful for external audiences (such as Parliament and the public) or were evidently incomplete. That is not to say that all responses were of that nature. Some departments and organisations, such as Transport for NSW and Department of Communities and Justice, had clearly made diligent efforts to provide comprehensive and comprehensible responses.

In any event, following completion of the research team's work, we wrote to all departments providing them with a compendium of survey responses from their portfolios. Noting that we were intending to publish the full compendium in this report, we invited them to consider whether there were any ADM systems that were missing, or whether any of the ADM identified should be better or more clearly described. We also invited departments to let us know if they considered that any of the specific information in the Compendium should be omitted for security or confidentiality reasons.

All departments responded, including the departments that had previously not participated in the research.

The Compendium that appears as the fourth document in this report represents the more complete listing of ADM systems, following that process for public sector agencies (departments and agencies).<sup>18</sup> It identifies 275 ADM systems including 198 in the state government sector and 77 in the local government sector.

This means, however, that the analysis in the Research Report may not align with the Compendium as the Compendium includes 77 additional ADM systems that were not brought to the attention of the research team.

Given our objective in this report to provide as comprehensive a map of ADM use in the public sector as possible, we have chosen to include the more complete version of the Compendium, including information that was given to us after the research team had completed their work.

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<sup>18</sup> We did not undertake a similar process in respect of local council survey responses, noting that 35 of 128 local councils had responded with 14 of them reporting ADM systems.



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