

Submission by



to the

Office of the Privacy Commissioner

on the

Privacy Regulation of Biometrics in Aotearoa New Zealand: Consultation Paper

5 October 2022

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**NZTECH SUBMISSION ON THE PRIVACY REGULATION OF BIOMETRICS
IN AOTEAROA NEW ZEALAND: CONSULTATION PAPER**

SUMMARY

1. NZTech thanks the Office of the Privacy Commissioner for the opportunity to submit on its consultation paper. Rather than address specific questions we have chosen to comment on key aspects of the paper about which we feel most strongly.
2. Fundamentally, we do not believe more regulation is needed beyond the Privacy Act 2020 to ensure the privacy of biometric information. Existing non-legislative measures such as guidance are adequate and in specific instances a Code of Practice could be considered. Additional regulation should be considered only as a last resort, again where it could be targeted to specific instances in which other means of address have clearly failed to achieve the desired outcomes.
3. We believe the scope of OPC's review should focus solely on the regulation of biometric information as it relates to the Privacy Act 2020, rather than biometric technology.
4. The industry can play an important role in supporting OPC's work on biometrics, and there are willing players – including many from among NZTech's membership – with the expertise and experience to help, provided they have sufficient resourcing from government.

BACKGROUND

5. NZTech is a member funded, not-for-profit, non-governmental organisation that represents 20 tech associations with over 1800 members who collectively employ more than 100,000 New Zealanders – over 10 percent of the New Zealand workforce.
6. Our purpose is to help create a more equitable, sustainable and prosperous New Zealand underpinned by good technology. We do this by helping our members work together to connect the tech ecosystem, promote the importance of technology for New Zealand and New Zealand technology for the world, and help advance the growth of the tech ecosystem and the New Zealand economy.
7. Our members include New Zealand tech exporters, local and multinational IT firms, start-ups, universities, government agencies, financial service providers and large corporate users of technology.

COMMENT

8. Regulation

We do not believe more privacy regulation of biometrics is needed. Regulation should be introduced only as a last resort, should there be significant compliance issues and impacts on people's privacy resulting from the use of biometric technology. Existing means of addressing poor practice, such as adherence to standards and specific field-tested guidance, would also need to have been found wanting before specific cases for further regulation could be made, and to date we have not seen this.

9. Code of Practice

We do not believe there is a pressing need to introduce an industry code of practice. Instead, we support in the first instance the use of guidance and standards, supported by clear evidence of their adherence, backed by public transparency and awareness. Should there be instances where existing measures fail to achieve desired outcomes, then a code of practice could be considered – but targeted to areas where there are known issues.

We support the idea raised by OPC of a Biometrics Commissioner as such a role would allow consideration of biometrics issues wider than the narrower privacy scope of OPC.

10. Biometric information versus technology

We believe OPC's review should focus solely on the regulation of biometric information as it relates to the Privacy Act 2020, instead of on biometric technology.

We agree with OPC that protections need to be in place to protect people's biometric information and its use under the Privacy Act. However, biometrics can have significant benefits for organisations and individuals – including convenience, efficiency and security – and these should not be jeopardised by undue compliance burdens.

11. Industry support for OPC

Rather than introducing more regulation, we would welcome greater collaboration by the OPC, the biometric tech sector and other interested parties, encouraging open discussion among privacy specialists, technologists, businesses and the public on how the technology works and its end purposes.

We understand that many of our members with detailed knowledge and experience of biometrics usage are preparing their own submissions to OPC on its consultation paper, and we would urge OPC to take into account their views.

CONCLUSION

12. The use of biometrics can greatly benefit organisations and individuals, providing greater convenience, efficiency and security. While we agree with the need to protect people's biometric information and to ensure it is used in line with the Privacy Act, we do not believe further regulation is the answer. Instead, we favour non-legislative measures to encourage best practice by the industry, which stands ready to support OPC in this regard.

13. Thank you for the opportunity to provide feedback on the paper.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Graeme Muller".

Graeme Muller

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