

What did we hear from our public engagement on biometrics?

Between 15 August, and 30 September 2022, the Office of the Privacy Commissioner released a consultation paper on privacy regulation of biometrics.

The Office received 100 submissions to this consultation, of which slightly over half were from organisations or individuals. The consultation, included users and providers of biometric technologies, Māori data experts, advocates for privacy, human rights and other interests, and individual experts.

The paper was designed to determine the need for regulatory options on biometrics and asked for the review of three assumptions. These were:

- Biometric information is personal information because it's information about an identifiable individual. This is true both of the original biometric characteristic and of a biometric template created from the raw biometric data ([see page 4 of the position paper](#)). Therefore, biometric information is regulated under the Privacy Act.
- Biometric information is sensitive information because it's directly connected to an individual's sense of identity and personhood, and because biometric characteristics are very difficult to change ([see page 5 of the position paper](#)). Sensitivities in relation to biometric information can also differ between cultures.
- Use of biometric technologies can have major benefits but can also create significant risks ([see pages 3-7 of the position paper](#))

The submissions we received broadly agreed with the assumptions, and most supported the concerns about biometrics identified by the Office. Some submitters noted additional concerns, including perceived inadequacies in the Privacy Act's coverage and enforcement powers how biometrics could be used to classify people. Other submitters took issue with the Office's list of concerns, commenting these concerns are not unique to biometrics, can be addressed through better compliance with existing requirements or through public education, or are the result of poor implementation rather than inherent problems with biometric technologies.

Additionally, most submitters thought some further regulatory intervention would be helpful in relation to biometrics. Some were comfortable with the existing regulation of biometrics under the Privacy Act, but supported clarification of regulatory requirements. Others felt stronger regulatory measures were needed to deal with risks to privacy.

There were mixed views on the most appropriate type of intervention. There was roughly equal support for further guidance and for a code of practice under the Privacy Act. There was also some support for legislative change.

Māori identified particular concerns, including about the tapu nature of biometric information and the potential for discriminatory impacts on Māori. They also raised wider concerns about Māori control of Māori data.