

8 May 2024

Office of the Privacy Commissioner
biometrics@privacy.org.nz

Retail NZ submission: Exposure draft of a biometric processing code of practice

1. Retail NZ is a membership organisation that represents the views and interests of New Zealand's retail sector. We are the peak body representing retailers across Aotearoa, with our membership accounting for nearly 70% of all domestic retail turnover. New Zealand's retail sector comprises approximately 27,000 businesses and employs around 220,000 Kiwis. We have consulted our membership in the preparation of this submission.
2. Retail NZ strongly supports the introduction of new technologies to proactively combat retail crime, such as the use of biometric data to identify repeat offenders.
3. Retail crime is a significant issue for Retail NZ's members. Crime presents an increasing health and safety risk to employees and customers and to the financial sustainability of retail businesses. The \$2.6 billion dollar annual cost of retail crime flows through from retailers to customers and the New Zealand economy.
4. It is also important that retail employees feel safe at work. Biometric processing of individuals entering retail premises has the potential to reassure employees that they can go about their day as safely as possible.
5. Retail NZ considers there are significant benefits this technology can provide when used with the right controls. There is a real opportunity here for both benefit to business and public safety. That is why the current trial of facial recognition technology by Foodstuffs North Island is so valuable to the wider retail sector - to identify any weaknesses in the technology and the processes for its use, and to demonstrate its value in mitigating crime.
6. We accept there are risks in the collection of biometric information and agree that businesses must do this responsibly, meeting the requirements of the Privacy Act. This will become even more important as the technology improves and the opportunities grow to adapt biometric data for other purposes.
7. Retail NZ acknowledges the Privacy Commissioner's objectives in establishing a biometric processing code of practice to ensure the privacy of individuals is adequately protected while also allowing businesses the ability to protect themselves.
8. We believe that the existing Privacy Act provides sufficient flexibility to address the evolving landscape of personal information protection, including the use of biometrics. Introducing a separate Biometric Processing Privacy Code could set an unnecessary precedent for technology-specific regulation, potentially hindering innovation and burdening businesses.
9. We suggest that a set of guidelines would suffice to meet the Privacy Commissioner's objectives in this instance, rather than a code of practice which would add compliance costs to businesses wishing to use biometric processing to protect their staff and business.
10. Guidelines would ensure retailers are being transparent and using best practice, thereby building trust with the public on the use of biometrics. Building trust with the public around this technology is paramount, as individuals want to feel safe, not that they are under surveillance.
11. The cost of collecting and processing biometrics will mean it is only used when retailers are confident that the benefits are worth the investment and that customers won't be inconvenienced.
12. We are concerned that the draft code of practice places too much onus on businesses to demonstrate in detail that the collection of biometric information is proportionate to the

risks to privacy and will place unnecessary barriers in the way of using biometrics. Businesses must already comply with the Privacy Act, ensuring robust protection of personal information, and it is our view that this adequately covers the collection of biometric information.

13. If a code is introduced, it should apply to all organisations using biometrics, irrespective of when they start doing biometric processing. The proposed timeframes for organisations to comply with the code of practice appear reasonable.
14. We understand the concerns about accuracy and bias. However, the technology is improving all the time and we believe the Foodstuffs North Island trial will go some way to alleviating these concerns.
15. Biometrics are being increasingly utilised for marketing, and it is critical that this is done in a transparent and appropriate manner. The proposed limitations on biometric use for marketing purposes appear reasonable.

Conclusion

16. Thank you for the opportunity to make a submission. Retail NZ is happy to discuss any aspect of this submission further.
17. No part of this submission should be withheld under the OIA.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Carolyn Young', with a small flourish at the end.

Carolyn Young
Chief Executive, Retail NZ
carolyn.young@retail.kiwi