



SUBMISSION

Submission: Biometric Processing Privacy Code and Guidance

To: biometrics@privacy.org.nz

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About Ia Ara Aotearoa Transporting New Zealand

- 1 Ia Ara Aotearoa Transporting New Zealand is a national membership association representing the road freight transport industry. Our 1,200 members operate and support urban, rural and inter-regional commercial freight transport services throughout the country.
- 2 As the peak body and authoritative voice of the road freight sector, Transporting New Zealand advocates for policies and investments that help our members operate efficiently, safely, and sustainably. Road freight transport accounts for approximately 93% of the total tonnage of freight moved in New Zealand.

Biometric Processing Privacy Code and guidance

- 3 Transporting New Zealand appreciates the opportunity to make a submission on the Biometric Processing Privacy Code and guidance.
- 4 Our submission is focussed on the application of biometrics in attention tracking and fatigue management. Effectively monitoring and managing driver distraction and fatigue is a priority for the road freight transport industry.

Safety implications of fatigue and alertness

- 5 Fatigue is believed to be a contributing factor in at least 12 percent of motor vehicle crashes. In 2022 fatigue was a factor in 23 fatal crashes and 80 serious injury crashes ([NZTA](#)).
- 6 The Land Transport Work-time Rule manages the risk of fatigue by limiting the number of hours that drivers can work and setting minimum breaks.
- 7 However, it is widely accepted that the current Land Transport Rule has significant limitations in its effectiveness to manage fatigue. In 1996 the report of the Transport Committee on the Inquiry into truck crashes (NZ House of Representatives) stated: *“Even if all drivers filled out their log books correctly and still worked the amount of hours permitted, drivers could still be fatigued. The quantity and quality of rest taken by drivers and the activities they undertake outside of work, are key factors in whether or not they become fatigued while driving”*.
- 8 Recent research and new technology has allowed road freight companies to better manage driver fatigue by taking a more systemic risk management approach. This includes third-party biometric technologies that enable attention tracking.
- 9 It is essential that the Code and guidance, particularly the proportionality and necessity assessments, do not present a practical barrier to road freight companies monitoring alertness and fatigue in professional road freight drivers.

Consultation paper questions

- 10 **Question 5-6:** Transporting New Zealand supports the longer commencement period of nine-months for organisations already using biometrics to bring their activities and systems into alignment with the Code.

- 11 Transporting New Zealand would appreciate the opportunity to work with the Office of the Privacy Commissioner to share educational resources including webinars and Q+A sessions with our membership during this period.
- 12 **Question 7-11:** Transporting New Zealand is concerned that the Code and guidance will cover biometric categorisation or inferential biometrics when this is typically not covered in other countries. Given New Zealand is a generally a technology-taker, a fast-follower approach can reduce implementation difficulties and avoid the need for companies to adapt New Zealand specific workarounds or variations.
- 13 **Question 16:** Transporting New Zealand is concerned that the necessity test (discussed at page 26 of the guidance) is too demanding and could rule out use of biometrics that will improve safety outcomes for all road users. In particular, the statements that:
- “If you can achieve your lawful purpose through an alternative with less privacy risk, then your biometric processing is not necessary”*
- and
- “The alternative does not need to achieve the **exact same outcome** as the biometric processing for it to be a viable alternative. It is an overall assessment of whether an alternative with less privacy risk would be able to achieve your lawful purpose to a **sufficient degree** [our emphasis].”*
- 14 Transporting New Zealand considers that this may set the bar for permissible biometrics use too high. We are concerned that this may have a stifling effect on alertness tracking and fatigue management technologies.
- 15 The necessity test should instead allow a balanced weighing of the benefits and costs of methods that would achieve a lawful purpose, empowering the agency to assess privacy risks against benefits including workplace and road safety.
- 16 We also recommend that the Office of the Privacy Commissioner consult directly with alertness tracking technology providers, if they have not already, to understand the impacts of the Code and guidance on those businesses and their customers.
- 17 **Question 27-33:** Transporting New Zealand appreciates the explicit reference to using biometric categorisation to detect tiredness in a professional driver not being restricted by fair use limits (page 94 of the guidance).
- 18 Transporting New Zealand would appreciate this situation being stepped through as a permitted Example Scenario in the guidance, to assist our members with compliance with the Code and guidance.
- 19 **Question 36:** Transporting New Zealand would like to reiterate our invitation to co-host webinars and Q+As for our members and the wider sector ahead of the Code and guidance being implemented. We would also appreciate the opportunity to meet with the Office of the Privacy Commissioner to discuss our submission further.

Ends