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To the Office of the Privacy Commissioner

Please find below DPA’s submission to the consultation on the use of biometrics.

## Disabled Persons Assembly NZ

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# Introducing Disabled Persons Assembly NZ

The Disabled Persons Assembly NZ (DPA) is a pan-impairment disabled person’s organisation that works to realise an equitable society, where all disabled people (of all impairment types and including women, Māori, Pasifika, young people) are able to direct their own lives. DPA works to improve social indicators for disabled people and for disabled people to be recognised as valued members of society. DPA and its members work with the wider disability community, other DPOs, government agencies, service providers, international disability organisations, and the public by:

* telling our stories and identifying systemic barriers
* developing and advocating for solutions
* celebrating innovation and good practice

# United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

A number of the Articles and principles of the UNCRPD are relevant to this consultation. We highlight those most relevant below:

## **Article 3 - General principles**

1. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women;
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

## **Article 4 - General obligations**

In particular, 4.3:

…States Parties shall closely consult with and actively involve persons with

disabilities, including children with disabilities, through their representative

organisations.

## **Article 5 - Equity and non-discrimination**

## **Article 9 - Accessibility**

## **Article 21 - Freedom of expression and opinion and access to information**

## **Article 22 - Respect for privacy**

# The New Zealand Disability Strategy (2016-2026)

The outcome of the New Zealand Disability Strategy most relevant to this consultation is:

## **Outcome 5 - Accessibility**

# The Submission

DPA is pleased that the Office of the Privacy commissioner is consulting on this important but murky area for disabled people.

The use of biometric programmes such as iris scanning, fingerprint reading and facial recognition, particularly when used to provide access to services and information, can pose significant barriers to many disabled people.

We list some of the barriers below.

## **Facial recognition**

How will this technology function for people who:

* Have temporary facial changes, e.g., drooping after a stroke
* Have permanent facial changes, e.g., scarring
* Sometimes wear strapping, e.g. to hold their jaw in place
* Cannot look straight ahead
* Need to wear sunglasses
* Cannot stand still, sit still or keep their head still

## **Iris scanning**

How will this technology function for people who:

* Are blind
* Experience nystagmus

## **Fingerprint identification**

How will this technology function for people who:

* Have no hands
* Have no fingers
* Have manual dexterity issues
* Have no fingerprints

These are only a few of the areas in which biometric programmes are now able to be used. Additionally, there is voice recognition, hand and ear scanning, gait and odour identification. Disabled people face access and privacy issues in all of them.

# Disability bias and risk

The benefits of biometric programmes are similar for people with and without impairments. However, equitable access to such technologies can be vital for equitable access to services.

Ableist assumptions built into an application can render it inaccessible even if it meets accessibility or legislative standards, e.g. a voice menu may time out or a lift door may close too fast. Such inaccessibility is avoidable if systems are designed with all disabled users in mind.

## **Data Bias**

Biometric systems require data (many examples of whatever information they are using) to guess things about people. If that data is biased (e.g. lacks examples from disabled people), biometrics are likely to be far less accurate in their guesses for those populations.

A person might have differently shaped or missing limbs, not have a fingerprint, walk differently, or speak differently than the system expects, leaving the person unable to access services tied to recognition of fingerprints, gait, or voice. This could also make biometrics inaccessible.

## **Lack of personal agency and privacy**

The risks of biometric failures can be higher for disabled people. For example, if an impairment is rare, this can make data security more difficult, or make it more likely that different people with similar impairments are confused for each other.

It is possible that biometrics could be used to label someone as disabled without their permission, an abuse of personal agency and privacy.

In addition, a biometric system may implicitly enforce what it means to be “human” if it fails to recognise an impaired body and then denies access to services as a result.

# Recommendations

These problems are difficult, but not impossible, to solve.

DPA recommends:

* **That the disabled community are involved in policy and decision making around biometrics;**
* **That new standards for algorithm accessibility are devised and implemented;**

In the same way that we have standards for web page accessibility. These should include expectations about testing with disabled populations and collecting unbiased data.

* **That disabled people are involved in the design and assessment of biometric systems;**

Participatory design, which includes disabled people as important stakeholders in the design process, is a good first step. However, genuine equity will require that disabled people are able to be part of the technology workforce so that they can directly build and innovate such systems. This requires access to higher education programmes; access to conferences and events where research and products are discussed, presented and shared; accessible tools for programming biometrics.

* **That rules about transparency, the ability to override or replace biometric systems when they fail to correctly understand a disabled person’s actions or input, be devised and implemented;**

This should include rules about the abuse of biometrics, e.g. detecting impairment without permission.

* **That the Office of the Privacy Commissioner monitor the adverse effects of biometric programmes on disabled people and take action to reduce or eliminate them.**