

Privacy Commissioner's submission to the Education and Workforce Committee on the Education and Training Amendment Bill (No 3)

1. I am pleased to provide a submission on the Education and Training Amendment Bill (No 3) (the Bill).
2. The Privacy Act 2020 is New Zealand's main privacy statute. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals.

Executive summary

3. The Bill makes a number of amendments to the Education and Training Act 2020.
4. My submission is limited to section 548A. I consider that additional work on this section is required to ensure that there are clear legislative parameters in place that protect the privacy of individuals.

Publishing and disclosing Early Childhood Education (ECE) student data – section 548A

5. My Office was consulted on some work undertaken at a fast pace in early 2023 to develop the policy approach behind section 548A. At the time, the purpose of this work was to enable access to Early Childhood Education (ECE) data within Statistics NZ's Integrated Data Infrastructure (IDI) to inform the development of a new Equity Index.
6. My understanding is that because the Ministry of Education (MoE) has the status of a researcher, it is already able to undertake work within the IDI on the development of an ECE equity index. Therefore, section 548A is no longer needed to enable this work.
7. I am supportive of the safe use of data to inform funding and policy decisions. In order to safeguard the integrity and social licence behind New Zealand's data infrastructure, it is critically important that this is done in a way that protects privacy.
8. However, I am concerned that the current drafting of section 548A appears to allow for publishing and disclosing data in a form that may identify an individual. I am not clear on when this may be needed and what the policy case behind this would be.
9. My understanding is that there are three ways in which the outcomes of the Equity Index work in the IDI may be used in relation to the development of the ECE Equity Index:
 - Communicating data outputs from the IDI to MoE.
 - Communicating outcomes, including funding implications, to affected ECE centres.
 - Potentially publishing the outcomes of the work publicly.

Communicating data outputs from the IDI to MoE

10. My understanding is that this is not currently possible, unless consent has been provided by ECE services. The new section 548A is intended to enable this to happen without consent from ECE services.
11. I am supportive of this kind of sharing of information as needed to develop the ECE Equity Index, as long as robust safeguards are in place. Data should only be provided at the service level (not individual level). My Office's previous advice to MoE was that section 548A should make it clear that data needs to be anonymised and confidentialised prior to it being shared.

Communicating the outcomes of the work to ECE centres

12. My understanding is that this is not currently possible. It is not clear whether the new section is intended to enable this. I recommend that further work is undertaken to investigate the processes and protections that would be needed in order for this to happen.

Publishing the outcomes of the Equity Index work publicly

13. My understanding is that policy decisions have not yet been made as to whether the ECE Equity Index will be publicly available. I am concerned that section 548A appears to enable publication prior to active policy decisions being made on this. I recommend that the ability to publish the ECE Equity Index publicly be removed from the legislation until policy decisions are made on this.

Conclusion

14. I trust my comments are of use to the Committee. I do not seek to be heard on my submission. I am happy to provide further comment and advice to the Committee as they consider the privacy implications of the Bill.

Michael Webster



Privacy Commissioner

1 May 2023