

Safeguarding children and young people's privacy in New Zealand

April 2024



Summary of consultation

Executive summary

Between August and November 2023, the Office of the Privacy Commissioner asked key stakeholders for their thoughts on children and young people's privacy in New Zealand.

We received a total of 113 responses from government agencies, professionals who work with children, academics, and non-governmental organisations who advocate for tamariki/children and rangatahi/young people. Responses were received in the form of full written submissions and through our online survey.

This report summarises the key themes from submissions we received, it will help inform the future direction of our work on children's privacy, as further work is done to explore the issues in more detail.

Three key themes emerged from the submissions:

- Guidance is needed to help professionals, parents, and children better understand the privacy rules that are currently in place.
- Some regulatory changes could better protect children's privacy, including changing the Privacy Act to include a right to be forgotten, introducing a requirement to consider the best interests of the child, among others, or creating a code of practice to make changes to the rules.
- Social media is a foremost concern, and a combination of guidance and regulatory changes are needed to manage this risk to children's privacy.

Introduction

Tamariki/children and rangatahi/young people in New Zealand have the same privacy rights as adults and can expect that their personal information will be respected and looked after by organisations. However, tamariki/children are more vulnerable to privacy harms, and so they require additional care to ensure that their

privacy is protected, especially in the changing environment where we see children using social media and artificial intelligence tools.

We are looking at the current suite of laws, regulations and guidance, to consider whether they are working well now and in the future.

From August to November 2023, we asked stakeholders for their thoughts on tamariki and rangatahi/children and young people's privacy in New Zealand. This report summarises the feedback we received. We have referred to tamariki/children and rangatahi/young people in this report as 'tamariki/children', and what we mean by this is any person under the age of 18.

In August 2023, we asked government agencies and peak bodies for their thoughts on tamariki/children's privacy in New Zealand. We wanted to know whether they had any concerns about the current privacy rules and asked for their opinion on ways to make privacy rules easier and more accessible for tamariki/children. We received submissions from:

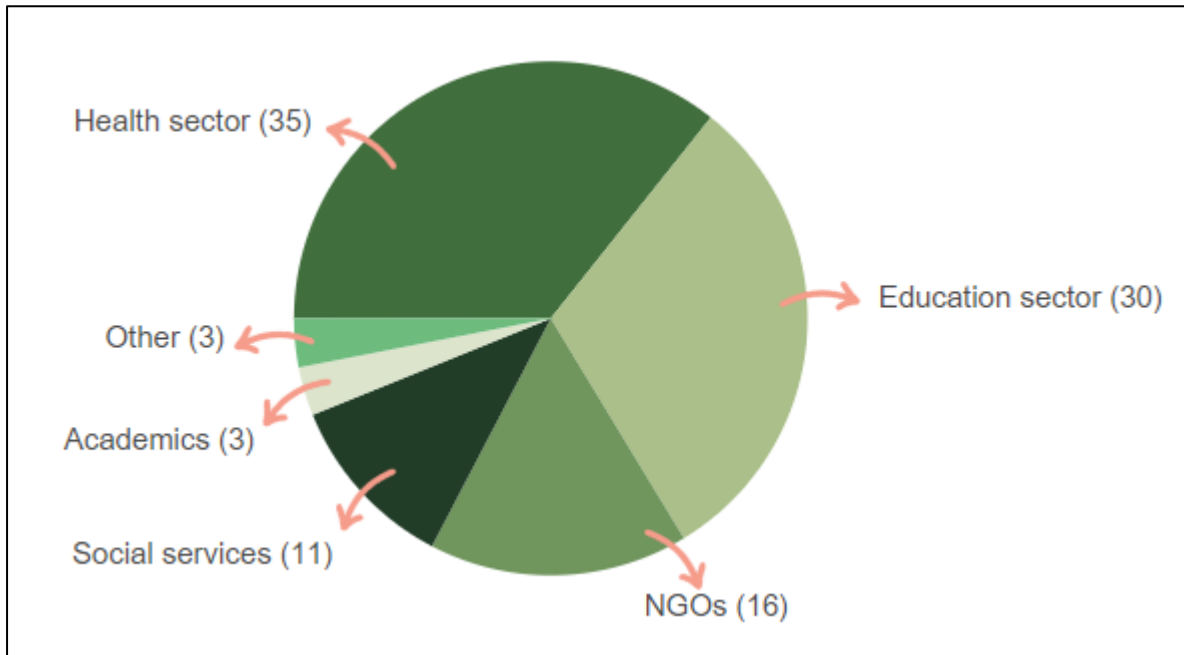
- Accident Compensation Corporation
- Customs
- Department of Corrections
- Department of Internal Affairs
- Government Chief Privacy Officer
- Health and Disability Commission
- Human Rights Commission
- Independent Children's Monitor
- Ministry of Education
- Ministry of Health
- Ministry of Justice
- Ministry of Pacific Peoples
- Ministry of Social Development
- Chief Ombudsman
- Oranga Tamariki
- Police
- Post Primary Teachers Association
- Statistics New Zealand
- Teaching Council NZ

In September 2023, we began consultation with professionals who work with tamariki/children (teachers, doctors, nurses, and so on), non-governmental organisations (NGOs) who advocate for tamariki and rangatahi/children and young people, and academics with an interest in tamariki/children's privacy. We asked what they were concerned about, and for their opinions on what could improve protections for tamariki/children's privacy in New Zealand.

Summary of submissions

We received 94 submissions from our online survey and written submissions.

Respondents indicated they were from the following sectors:¹



Around 75% of survey respondents worked in either the health or education sectors – the people who work with tamariki/children’s personal information every day.

**“We need to ensure we do everything to protect
our children’s privacy and their futures.”**

Survey respondent.

¹ Some respondents indicated that their role covered multiple sectors.

Theme one

We need to create more guidance for parents and tamariki/children, and for different sectors.



A lot of the feedback we got highlighted the need for more guidance that is easy to understand and can apply to a range of different situations.

In general, respondents said they knew what the privacy rules were or where to find them, but they would like more support and clearer information to help them apply the rules. Respondents said dealing with real life situations with difficult circumstances means it's not always obvious what to do.

“...privacy situations are not always clear cut.”

Government agency/peak body.

“The Privacy Commission[er] website contains good information. However, it would be good if it was consolidated.”

Survey respondent.

Guidance for parents/caregivers/guardians

Respondents told us that they wanted guidance on tamariki/children's privacy rights to be created for parents, caregivers, and guardians. Guidance should help parents understand how they can protect their child's privacy rights, including what they can expect from agencies collecting their child's information, and how they can use technology (such as social media) in a privacy protective way.

When asked what could be done better to support parents, 48% of survey respondents said that there needs to be more guidance created for parents, and 45% said that parents need education resources to help them upskill. Guidance shouldn't interfere with parenting decisions or approaches, but it should provide parents with the tools to protect their children's privacy.

I want “...better education and information for parents of very young children e.g., understanding privacy risks of sharing content of children...”

Government agency/peak body.

“Upskill parents/whānau to understand their rights...”

Survey respondent.

OPC’s “website can support parents/caregivers to learn more about Internet safety, and protecting personal safety by including links that provide up-to-date, relevant, referenced, informative resources that are available in video (with CC [closed captioning/subtitles]), written and audio format.”

Survey respondent.

“This area is a minefield of opinion and covers a wide range of approaches to parenting. Some clearer guidelines would help families in their thinking and thus make it safer for children in an ever-changing information world.”

Survey respondent.

What is guidance?

Guidance explains how to apply the Privacy Act and the Information Privacy Principles. It can help organisations and individuals understand the privacy rules in a specific context, for example, [the rental sector](#), or when using specific technology, for example [artificial intelligence](#) (AI). This can help organisations understand whether they are meeting their legal requirements under the Privacy Act or a Code of Practice. Guidance can also include educational resources to help people understand their privacy rights and what they can expect from organisations that hold their personal information.

Guidance for tamariki/children

Many respondents noted the need for child-friendly and age-appropriate resources. Some respondents explained that if tamariki/children aren’t informed about their privacy rights, then they cannot enforce them or understand when their privacy has been breached.

Respondents said that guidance for tamariki/children needed to be in plain, child-friendly language, targeted at a variety of age groups, and in multiple formats, such as, posters, pamphlets, videos, and e-learning modules.

Guidance should acknowledge the daily lives of tamariki/children – they are online using social media and gaming platforms, they use technology in the classroom, and they do not always understand how to do so safely. Tamariki/children are more vulnerable than adults to privacy harms, and guidance will help to educate them from a young age.

“Children are inherently more vulnerable due to their limited capacity to understand the privacy risks and harms or to exercise their rights as data subjects.”

Survey respondent.

“[We] would like to see the development of tools to alert/help young people keep themselves safe online and aware of privacy risks.”

Government agency/peak body.

Guidance for professionals

Overwhelmingly, we heard that privacy guidance is needed for professionals who work with tamariki/children. This message is bolstered by the high response rate we had from people in the education and health sector (75% of survey respondents).

When asked for their opinion on ways to better support their profession, 42% of survey respondents mentioned that there needs to be clear guidance on tamariki/children’s privacy for their sector, and 33% said that they wanted privacy training at work.

Based on the submissions we received, we know that guidance is needed for professionals working in the education, health, and social service sectors. We also understand there should be some overall guidance that could be applied to any sector that collects tamariki/children’s information.

Respondents explained that guidance should factor in the daily reality of their work, recognising that best practice varies based on their job, the age or capacity of the child, and the information they hold (for example, if it is sensitive information).

Guidance should help professionals make decisions about tamariki/children's information, for example, what to collect and when to share it, noting that it will not always be straightforward, and should also be informed by other various legal, professional, and ethical frameworks that apply in different sectors.

One response noted that there tend to be very different privacy practices across different sectors, so there will need to be overall guidance on tamariki/children's privacy to help guide more cohesive approaches managing tamariki/children's information.

“We also recommend that schools are provided with appropriate sector specific guidelines to enable them to understand the scope and use of the information they hold about children.”

Written submission.

“We strongly suggest the need for training and professional development to be in the policy project, taking into account the different roles and responsibilities that people may have.”

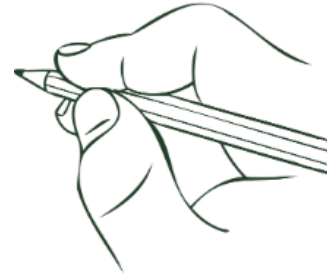
Government agency/peak body.

When talking about parents requesting access to a child's personal information: “I think that there needs to be consideration of how accessing this information will help or hinder the young person. It would be great if there were clear guidelines on how to do this.”

Survey respondent.

Case study: EdTech

One written submission used EdTech² as a detailed example of an area where privacy guidance is needed.



The submission explained that schools are not equipped to protect children’s privacy in the EdTech space. Firstly, there is a power imbalance between schools (particularly very small schools) and the EdTech companies providing their services.

Schools may not have the negotiating power to insert privacy protective clauses into contracts, which may leave tamariki/children’s personal information vulnerable to the commercial interests of the EdTech provider. There is no oversight of these contracts, so it is unclear if those types of clauses are commonly used.

Secondly, while it would be good practice, there is no requirement for schools to undertake a privacy impact assessment (PIA) when implementing new EdTech products, so schools may not be aware of and mitigate the privacy risks. The submission explained that schools will “need extra support to ensure [PIAs] are carried out, with specialised training and resources being made available.”

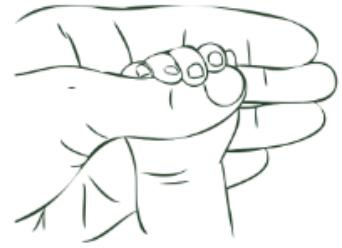
What can we learn from this?

The feedback we received highlights the need for accurate information in a central resource, which is easy to understand and can apply to the real-life scenarios that people deal with. We heard about specific circumstances that professionals find challenging (for example, what to share with parents if their child goes by different pronouns at school) and learned more about the needs of the people that any guidance and supporting material in this area is developed for. We have heard this message clearly, and will consider work on more resources, in partnership with other agencies, to address these needs.

² EdTech (educational technology) are tech tools that help with teaching and learning at schools.

Theme two

Regulatory changes are required to improve the protection of tamariki/ children’s privacy in New Zealand.



A key theme that featured in the submissions was the desire for changes to the privacy rules, to enhance privacy protections for tamariki/children. The suggestions ranged from small to significant, from specific to general, but from these suggestions we formed a list of key changes that submitters would like to see.

We note there are multiple ways these changes could be made, one of which could be amending the Privacy Act 2020 (or other relevant legislation), or a code of practice could be considered to respond to particular issues (which was identified by submitters and discussed below).

We will need to do further work to assess the suggested changes and consider the best way to progress or advocate for those changes that OPC believes are worth pursuing.

Capacity of the child

Respondents suggested they wanted some direction to organisations on how to factor in the age or capacity of the child. Respondents expressed that there should not be any concrete rules around age, as every child is different, but there should be some consideration of the child’s capacity to consent to the collection, use, or disclosure of their information.

There are several different rules and laws which apply regarding age of consent in different contexts, so one submitter suggested that a code which addresses this should complement these different requirements, instead of muddying the waters for professionals.

“Can’t put a chronological age on it, it’s all about emotional maturity and understanding and is a sliding scale depending on gravity of [the] information.”

Survey respondent.

Requirement to consider the best interests of the child

The United Nations Convention on the Rights of the Child (UNCRC) is an international pact which is dedicated to children’s rights. One of the key principles of UNCRC is the ‘best interests of the child’ concept. This concept prompts decision makers to think about what will benefit the child the most, and to consider the child’s wellbeing, happiness, health, and any other things which impact the child’s life.

While we did not specifically ask about the best interests of the child, the submissions we received showed that submitters understood the concept and felt that this would be an important way to help protect tamariki/children’s privacy.

When asked whether parents should be able to request their child’s personal information, 66% of survey respondents said that they should, but when asked to explain their answer, many responses explained there should be some nuance and decisions should be made based on what is in the child’s best interests.

Some submissions recommended a specific obligation to consider the best interests of the child should be required when collecting, using, and sharing tamariki/children’s personal information. This would place the child’s wellbeing as the central consideration and can neutralise decision making when dealing with complicated situations, which is the daily reality for professionals who work with tamariki/children.

Submitters explained that tamariki/children are vulnerable to numerous harms, including privacy harms, and so a requirement to consider their best interests will help to manage this.

“A test of this nature would also deal with situations where a child or young person wanted access to information that could be harmful. Family law recognises that the wishes of children and young people are not always aligned with their best interests.”

Written submission.

Create a right to be forgotten

The right to be forgotten³ is the right to have personal information removed or deleted, which can include being deleted from an organisation’s records or being removed from internet search engine results. We do not have a right to be forgotten in New Zealand privacy law, although individuals can ask for their information to be deleted if it is incorrect and agencies cannot retain information for longer than they need it.

We did not ask respondents about a general right to be forgotten, but many still argued in favour of this right being created. Submissions noted that many tamariki/children use social media, which presents many risks, including that social media companies collect a lot of information about tamariki/children, and that tamariki/children do not always use social media responsibly, which can have privacy implications. 69% of survey respondents said that they wanted the right for children to ask for their information to be deleted from social media.

“Young people don’t have the capacity to make fully informed decisions about their digital footprint and the long-lasting implications of having an online presence.”

Survey respondent.

“As I look further into privacy and how it applies to children's academic data I am increasingly concerned that NZ law does not appear to have a 'right to be forgotten' clause.”

Survey respondent.

³ This is also known as the right to erasure and the right of deletion – these are similar concepts, although there is some difference between them.

Require organisations to be more transparent and to obtain consent

80% of survey respondents were concerned about how tamariki/children's information is used, 74% said organisations should not use tamariki/children's information without their clear consent, and 69% said that they wanted digital platforms to be more transparent about how they collect and use tamariki/children's data.

It was clear from the submissions that how organisations communicate with people and tell them about how their information is used was front of mind for submitters. 47% of respondents said that requiring organisations to use direct, plain, and child-friendly language in their privacy statements would enhance transparency.

Organisations are already required to tell people they are collecting information and what they plan to do with it (with some exceptions, outlined in the Privacy Act 2020), but there are no specific requirements for the way organisations do this or the type of language they use.

Restrictions on how tamariki/children's personal information can be used

When asked about what concerns them about tamariki/children's information, 80% of survey respondents said that they were concerned about how organisations use tamariki/children's personal information after it has been collected. When asked what is important to them, 52% said that it is important that tamariki/children's information is not used for direct marketing.

One submitter argued against tamariki/children's data being monetised or commercialised but noted that the line between using information to deliver a service and commercial uses is not always clear cut. These submissions tell us that there is a desire for some limitations on how children's information can be used, but there is still work to be done on what any regulatory change could look like.

Create minimum age requirements for using social media

99% of survey respondents said that there should be a minimum age requirement for using social media. There were some different ideas about what this minimum age should be, but most respondents (42%) thought it should be between 14-15 years old, followed by 29% who thought the minimum age should be between 16-17 years old.

Improve redress for breaches

Some submissions expressed that there needs to be higher penalties for organisations who breach a child's privacy. One submission noted that if there is a perception there are no consequences, then organisations are less likely to comply with their Privacy Act obligations, which puts tamariki/children at higher risk of privacy harm.

Regulatory options suggested during consultation

Submissions suggested two main regulatory options to address the suggested changes: amend the Privacy Act 2020 and create a code of practice.

Some submissions were specific in their suggestions, for example, one written submission suggested that we focus on age-appropriate design like the Age-Appropriate Design Code in the United Kingdom. Other submissions were more vague about how to make the changes, but asked for specific requirements around consent and minimum age requirements.

We are yet to do our own analysis on the points raised in submissions, the nature of any regulatory gaps or areas for clarification and education, and how any reform options could be developed and progressed. However, we note that the submissions indicate that people are open to discussing regulatory changes that protect tamariki/children's privacy.

What is a code of practice?

A code of practice is a set of rules which change how the information privacy principles apply in certain situations and in certain industries. They create privacy rules that are more suitable for the situation they address - for example, the Health Information Privacy Code sets the rules for dealing with health information by health agencies.

What can we learn from this?

A dominant theme in the feedback was a call for change in New Zealand privacy regulation. Respondents made it clear that there are aspects that they see in other countries (for example, the right to be forgotten, or a child-specific code of practice) that they would like to see explored here.

There are so many developments in technology and the way that tamariki/children interact with the world that have led respondents to consider that New Zealand's privacy protections do not go far enough. We hear the concerns raised during this consultation, and we will consider further work to explore these options in detail.

Theme three

There's great concern about tamariki/children using social media and the risks of the online environment.



Alongside the two key themes calling for guidance and regulatory changes, submissions also made it clear that the risks of social media are front of mind for them. There are several privacy risks associated with social media, with submissions noting social media companies, parents using social media, and tamariki/children using social media being the most concerning risks.

Parents using social media

Submissions noted the risks associated with parents using social media, and the impact this could have on tamariki/children's privacy. Not all social media use carries a high risk, but there were certain behaviours that submissions noted as being the most concerning. The most significant concern raised was around parents who post their tamariki/children on social media platforms in order to gain a social media following and monetise that content. Submissions suggested an information campaign to educate parents on the risks of posting images of their tamariki/children on social media, even if that content is not monetised.

“This is very difficult, and parents have different levels of understanding and concern about social media use.”

Survey respondent.

Children using social media

It was clear from the submissions we received that submitters are very concerned about how tamariki/children use social media.

They noted that tamariki/children don't have the capacity to understand the consequences of posting or doing certain things on social media, and this is a key area where tamariki/children's privacy is at risk. Submissions noted risks around how social media companies collect and use tamariki/children's data, the risk of bullying, and all content (including photos, comments, and posts) being immortalised on social media.

“We put the dangers of smoking on cigarette packets and the potential dangers of social media should be flagged in the same way.”

Survey respondent.

Social media companies

Respondents noted that minimum age requirements are difficult for social media companies to enforce, as it is relatively common for rangatahi/young people to use a false birthday when creating an account. Submissions also noted the risks of tamariki/children's social media data being shared with or used by third parties, a risk which can be exacerbated by tamariki/children using false ages. One submission suggested a good way to try to manage these risks is to do an information campaign to help parents understand the risks and tips on how to protect their tamariki/children on social media.

What can we learn from this?

Concerns about social media and the online environment was a thread woven through the submissions. We understand we will need to consider these concerns in any action we do moving forward, including drafting guidance and looking into options for a regulatory response.

Ngā mihi

Thank you for sharing your thoughts with us!

We would like to thank all of those who took the time to share their thoughts on tamariki/children's privacy in New Zealand. Thank you for sharing your experiences and opinions with us and sending us such detailed and thoughtful submissions.

We will genuinely consider this valuable feedback to finalise the next steps for protecting tamariki/children's privacy in the coming months.