NEWSLETTER

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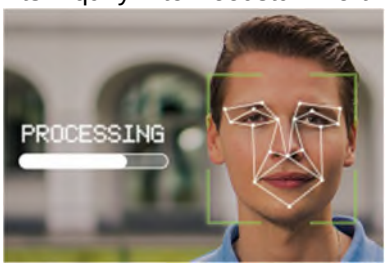
Foodstuff's FRT trial found compliant

The Office of the Privacy Commissioner (OPC) released in May the findings from its inquiry into Foodstuff North Island's (FSNI) 2024 trial of facial recognition technology (FRT) as a deterrent to retail crime and violence towards staff and customers.



The overall finding from the inquiry was that the model deployed and progressively updated by FSNI during the FRT trial, complied with the Privacy Act. Key features of the compliant model included:

- Its clear and limited focus on identifying people who had committed serious harmful behaviour, including physical and verbal assault and higher value theft.
- Watchlists of people of interest were compiled by staff trained on the criteria for harmful behaviour. To be watchlisted, two staff members had to agree that the criteria had been met. Watchlist enrolment was set to expire after two years, and lists were not shared between stores.
- The elderly, those under 18 and people with known mental health conditions were not added to watchlists. Images not matching a store's watchlist were immediately deleted, and matches not actioned were deleted by midnight the same day.
- Watchlist alerts needed to be generated by more than one camera, and checked by two trained staff members, before any intervention was made.
- Accuracy levels for watchlist matches were acceptable, with no apparent bias or discrimination in how watchlists were populated or in how decisions to intervene were made.
- Information gathered was not used for any other purpose. Access to the information was limited to authorised people only, with all access logged and regularly reviewed.

The report from the independent evaluator (Scarlatti) FSNI engaged, found evidence that FRT in trial stores had reduced serious harmful behaviour by an estimated 16%.

Intervention by supermarket staff approaching repeat offenders accounted for around half of this reduction, while the deterrent of FRT use stopping them returning, accounted for the remainder.

The OPC report also identified improvements that were needed, these included:

- Due to its invasive nature, FRT should be reserved for serious crime behaviour, such as targeted in the FNSI trial, and not for managing lower-level criminal behaviour, such as minor shoplifting or for people seen as difficult.
- For those under a trespass notice, these are issued for a variety of reasons and therefore need to be checked to ensure the criteria of harmful behaviour is met before they are added to a watchlist.
- Ongoing monitoring and review of FRT, to ensure watchlists do not contain out of date or biased information, and that data on misidentifications, including skin tone, is being captured to help understand and remedy these occurrences.

The OPC emphasised that their report "is not a green light for more general use of FRT", but that it provides guidance for businesses considering FRT and what is required to employ FRT in a privacy protected way.

Public Works (Critical Infrastructure) Amendment Bill

Legislation to streamline land acquisition for critical infrastructure projects, the Public Works (Critical Infrastructure) Amendment Bill (Bill), was introduced in May. Land Information Minister Chris Penk's press release stated, "Right now, it takes up to a year on average to acquire land. If compulsory acquisition is required, the process generally takes up to two years, with at least another year tacked on if objections to the Environment Court are made."

The Bill would amend the Public Works Act 1981 (PWA) to speed up the process to acquire land for critical infrastructure projects included in Schedule 2 of the Bill; which includes those listed in Schedule 2 of the Fast-track Approvals Act. The amendments are intended to come into force six months prior to wider PWA review amendments.

Key points from the Bill are outlined below.

Streamlined objections process - The objections process for land being acquired for critical infrastructure projects would be streamlined, whereby a landowner would submit their objection in writing directly to the relevant decision maker, either the Minister for Land Information or the local authority; instead of going through the Environment Court. The landowner would retain the right to seek a judicial review of official decision making, but not with respect to whether the acquisition itself was fair.

In coming to a decision, prior to issuing a notice to acquire land, under the Bill the decision maker would be required to give regard to matters similar to those the Environment Court would address when dealing with an objection. This would include whether alternative sites, routes or methods have been adequately considered, and whether in their opinion it would be fair, sound, and reasonably necessary for achieving their objectives for the land to be taken.

Incentive and recognition payments – To incentivise landowners to come to an early agreement, before a Notice of Intention is issued, landowners who do so would receive a payment equivalent to 15% of the total land value, up to a maximum of $150,000 and a minimum of $5,000. Furthermore, in acknowledgement of the role their land has played in delivering essential infrastructure, landowners whose land is acquired under the accelerated process would also receive a recognition payment of 5% of the total land value, up to a maximum of $92,000.

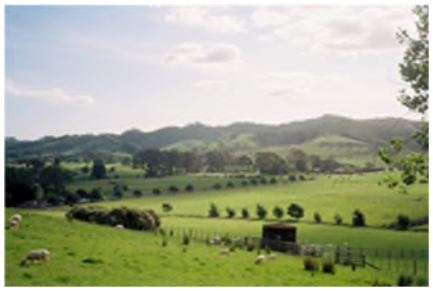
Protected Maori land – This type of land would be excluded from the critical infrastructure process, in acknowledgement of the pain inflicted in historic confiscations of land through previous versions of the PWA. However, if acquisition of such land does occur under the standard PWA process, owners of such land would still be eligible for the recognition and incentive payments afforded to those under the proposed streamlined process.

The Bill is expected to make its way through Parliament, and of the opposition parties, has had Labour's support.

Proposed restrictions on farm to exotic ETS forestry conversions

In a move to restrict productive farmland from being converted to exotic forest registered in the New Zealand emissions trading scheme (ETS), the Government's Climate Change Response (Emissions Trading Scheme—Forestry Conversion) Amendment Bill (Bill) was introduced and passed its first reading in June this year. The concern is that the ETS incentivises farm conversions to exotic forests, due to current and expected returns for New Zealand units (NZUs) being cost-competitive with pastoral

land uses. Whereas, the economic return for forestry outside the ETS, which this Bill does not prohibit, is close to that of sheep and beef farming.



The Bill would amend the Climate Change Response Act 2002 to manage the balance between protecting our most productive farmland for food production, while still supporting our climate goals through farmers participating in the ETS. The impact, of locking up productive land for NZUs, on the viability of rural communities is also a key consideration.

The Bill proposes using the Land Use Capability (LUC) classification system, which classifies land based on its capability for long-term production. The restrictions would focus on the most productive land as follows:

- For an individual farm, exotic forestry on up to 25% of its high to medium-versatility land (LUC class 1-6) would be eligible for registration in the ETS; ensuring farmers have some flexibility as to land use.
- Each year, an additional 15,000 hectares nationally of LUC 6 farmland would be allowed to be registered in the ETS. The right to register this land would be allocated using a randomised ballot system. This allocation would be in addition to the 25% allowance on the same farm.
- No restrictions would apply for exotic ETS forestry on low-versatility farmland (LUC 7 and 8) or land that is not actively farmed (in the 5-year period prior to ETS application).
- Existing forest land, and new indigenous forestry would be eligible for registration in the ETS.

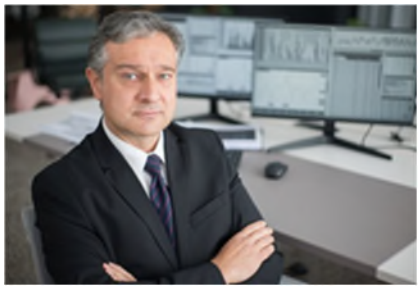
Exemptions that would apply include:

- A transitional exemption would be available for those who had begun the process of converting farmland to exotic forest in the period between 1 January 2021 and 4 December 2024. Conversions that began after the new restrictions were announced on 4 December 2025 would be subject to them.
- An exemption would be allowed for land with high or severe erosion risk that should be retired from farming to prevent further erosion.
- Specific types of Maori land would be excluded from the restrictions in line with Treaty obligations.

The Bill is being moved along quickly, and if passed would come into effect 31 October 2025, with the first ballot of LUC 6 farmland in mid-2026.

Debanking Bill

In May this year a Members' Bill, the Financial Markets (Conduct of Institutions) Amendment (Duty to Provide Financial Services) Amendment Bill (Bill), was drawn from the Parliamentary ballot. Also referred to as the 'de-banking' or 'woke banking' Bill, its purpose is to prevent registered banks "debanking" or withdrawing banking services from, or refusing to provide services to, individuals, body corporates or companies for non-commercial reasons. The Bill would amend the Financial Markets (Conduct of Institutions) Amendment Act 2022.



The Bill would remove what it terms "murky 'environmental, social or governance' moralising" from banking. It would require financial institutions to not treat any consumer less favourably in the provision of financial services, than would otherwise be the case, for any of the following reasons:

- any of the prohibited grounds of discrimination in section 21 of the Human Rights Act 1993;
- any direct or indirect environmental, social, or governance consideration;
- any climate-related reporting standard issued by the External Reporting Board;
- the industry within which the consumer operates.

The Bill does affirm that financial institutions can withdraw or refuse to provide services to consumers or treat them less favourably for a valid and verifiable commercial reason; or as required or permitted by any other enactment.

The offence for failing to provide financial services would carry penalties of imprisonment of up to three months or a fine not exceeding $50,000 for individuals, and for a corporate entity a fine not exceeding $500,000.

It goes without saying that for businesses to thrive, grow and indeed survive in a competitive or volatile market, having access to credit facilities can be critical. With that considered, one of the questions posed at the Bill's first reading was, given that a business is engaged in lawful activities, do financial institutions have a duty to continue to provide financial services to these customers, even if they are in a sector a bank no longer approves of. Should financial institutions have the power to withhold such

fundamental services, on non-commercial grounds, thereby acting as moral arbiters?

On the flip side, the Bill's explanatory note states that the amendment "extends protection from debanking to industries that environmental, social or governance rules deem to be undesirable". As such, the sentiment has been expressed that the amendment is less about ensuring that everyday Kiwis have fair access to financial services, as it is about extending protection to those doing business in industries such as fossil fuel and mining.

Submissions to the Finance and Expenditure Committee can be viewed on the Parliament website. The Select Committees report is due 21 November 2025.

Snippets

New Zealand's first AI strategy

New Zealand's first strategy for Artificial Intelligence (AI) was released by the Government in early July.

The strategy focuses on AI adoption and application, to enable the benefits AI offers businesses to be more quickly realised, rather than waiting for foundational AI model development to mature locally.

The Government's stated role is: "to reduce barriers to adoption, provide clear regulatory guidance, build necessary capabilities, and ensure that adoption occurs responsibly." Barriers identified that the strategy aims to address include the following.

Regulatory uncertainty around how existing laws apply to AI, have resulted in a cautious approach to implementing AI. In addressing this, the Government intends to take an enabling and principles-based approach to AI policy, using our existing frameworks (e.g. privacy, consumer protection, human rights), which can be updated to enable AI innovation, and to deal with any issues that arise, with legislation.

The lack of AI expertise, privacy and security concerns with managing sensitive customer information, and ethical considerations have also been raised. To support businesses through this, the Government released a companion document 'Responsible AI Guidance for Businesses' to provide advice on implementing AI, managing risks and meeting regulatory obligations.

Lack of understanding of the capabilities of AI and/or how it might benefit one's business have resulted in AI's potential being undervalued. The publication of the AI strategy is intended to address this knowledge gap, and to spur the interest and experimentation necessary to lift AI capabilities.

The AI strategy and supporting documents can be found on the Ministry of Business, Innovation and Employment website at https://www.mbie.govt.nz .

Is your pay your own business?

A member's bill that would ensure employees can discuss their remuneration details with others without the fear of action being taken by their employer, regardless of what their contract says, has been making its way through Parliament.

At present, employers can include pay secrecy clauses in contracts, which if breached can result in disciplinary action being taken. The Employment Relations (Employee Remuneration Disclosure) Amendment Bill (Bill) would amend the Employment Relations Act 2000 to make these clauses ineffective, in relation to adverse treatment, by making "adverse conduct for a remuneration disclosure reason" a new ground for a personal grievance. Adverse conduct would include dismissal, withholding terms of employment, conditions of work, fringe benefits, promotion, or other opportunities afforded to similar employees.

The Bill would not be retrospective, in that the conduct by an employer being challenged must have occurred on or after the Bill's commencement date.

Although the intention of the Bill is to enable people to discuss their pay without repercussions, the Bill's general policy statement makes it clear, the wider objective is that it "would lead to greater transparency in pay and allow any pay discrimination to be more easily identified and remedied". Similar pay secrecy prohibitions have been coming into effect overseas, including in the US and the UK, to help address pay transparency issues.

With the three opposition parties and National indicating their continued support, there is good reason to expect the Bill to be passed into law.

If you have any questions about the newsletter items, please contact us, we are here to help.