

Your customers trust you to respect their sensitive data and keep it safe. Which may include revising how you collect gender data or not collecting it completely.

This guide helps you consider what data privacy looks like in the context of gender data, why it's important, considerations to take when deciding if you truly need to collect gender data, and if you do, how to collect it in an inclusive and safe way.

What is Data Privacy and why is it important?

Data can help businesses design better, more intuitive products, services and experiences. But if the data isn't necessary or accurate, it can actually do more harm than good.

This is especially the case with gender data. Binary forms and fields (male and female) misrepresent whole communities of people. This is hurtful, and forces people to lie or even out themselves before they're ready.

Revising if, when, and how you collect gender-related data will help align your organisation's data practices with your customers' expectations, and the inclusive values of a progressive and diverse society. Plus it may help you attract new customers and engage more authentically with existing ones.

Data privacy is also a legal obligation; the Privacy Act 2020 protects individuals who supply their data by setting out certain obligations for businesses who collect it. As people become increasingly aware of their privacy rights, one small misstep in data collection can upset your customers and damage the reputation of your brand, or even create legal risk.

<CONSIDERATION 1>

Do you really need to collect gender information at all?



The Privacy Act 2020 requires that you only collect information that is required for a lawful purpose connected to your organisation. For example, a lawful purpose for your organisation might be delivering a product or service.

When deciding whether or not you need to collect gender and identity related data from customers, think about the service or experience you are providing and ask yourself whether you actually need data on gender to provide that particular service or experience.

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Considering whether you need gender and identity data in your particular business will depend on a range of specific factors, but here are some questions to help you make that assessment:

Can you deliver your product or service without gender data?

- If the answer is yes, you probably don't need it.

Is there alternative information you could use to achieve the same purpose?

- If the answer is yes, you don't need to collect gender and identity data.

When did you last use that type of data?

- If you haven't used gender or identity data recently, you probably don't need it.

When would you actually start using it?

- If you haven't got a particular use for gender data in the near future you probably don't need to collect it.

If you already collect gender and identity data, what would happen if you lost this data set overnight? How big would the impact be? How many people would it affect?

- If it's no/low impact, you probably don't need to collect it.

How might lawful purpose play out in different industries?

Depending on your industry, the data you need to collect and use will be different to other industries. For example, if you own a gym, you may collect data on a customer's weight or height to help build a more personalised experience. Gender information may be relevant to help set fitness goals. Compare this to a business selling electronics, where gender data is less likely to be required.

Or consider the health insurance industry, who may sometimes ask for gender for medical purposes.

This is where it is important to reflect on what data your business legitimately needs to benefit your customers' experience or provide a service.

You can also look at ways you can use different data points to create the same impact. An example is the beauty industry, which tends to use gender as their main data point when collecting from customers. Instead of gender, they could use skin type as a data point. This could provide better insights into the customer's needs and avoid having to ask for their gender.

<CONSIDERATION 2>

Transparency - If you collect gender data you need to tell your customers why

When collecting personal information from customers, the Privacy Act 2020 generally requires you to make sure the individual knows that it's being collected, and what it will be used for. If you have decided you need gender and identity data, make sure you explain this to your customers, and how you'll use it.



Some organisations find that when they begin to consider how to communicate their reasons to collect gender and identity data and its purposes to customers, they don't need it after all. Some questions to double check whether you really need gender data include:

- Would you ask your customers about their gender and identity if you were face-to-face?
- Could you explain to your customers why you need to use this specific data? Does your explanation pass the 'red face' test?
- How would you feel if you were interviewed on TV and had to explain your organisation's gender collection and use policies?

If you would feel uncomfortable in any of the above scenarios, perhaps it's worth revisiting whether or not your organisation really does need gender data. Also:

- Ask yourself how your customers might feel to have to answer gender questions and reflect on whether their privacy is being respected?
- Consider whether the purpose and associated benefits are worth the possible discomfort customers may feel.
- Do your customers experience any benefits as a result of sharing gender data with you? If customers don't see value from sharing their gender data with you, it may be difficult to justify why you need it.

<CONSIDERATION 3>

Safety is key

For people who identify as non-binary, being outed or misgendered is hurtful and potentially dangerous. Be transparent with your customers around the safety and security of their data, including who can access it, where it's being stored and how it will be used.

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<h4>Clear, empathetic explanations</h4> <p>When explaining the usage of customer data, especially sensitive data points such as gender, ensure your tone is empathetic, reassuring and unambiguous. Give customers the ability to access more information on their data, or provide a dedicated contact person to talk to.</p> <h4>Only use or share it for the purpose for which you collected it</h4> <p>Sharing data in a way that customers are not expecting could create brand and even legal risk. Only use or share gender data for the purposes you have advised customers you will use it for, with organisations you have said you will share it with, or as otherwise allowed by the Privacy Act.</p> <h4>Keep it secure</h4> <p>Only people who need data for the purposes advised to your customers should be able to access it, and those people are aware they can only use it for its intended purposes.</p>	<p>Training around data sensitivity and care of data will help keep it secure. Ask your security or IT advisor to ensure that the data is held securely, too. You should regularly review whether you need to keep the information or can securely dispose of it.</p> <h4>Access and correction</h4> <p>The Privacy Act provides customers with the right to access and correct any information you hold about them. Ensure that it's easy for your customers to check their gender details and update if needed.</p> <h4>If in doubt, don't collect</h4> <p>If you have doubts about the data you're collecting, you probably don't need it. Data collection for the sake of it doesn't help anyone. If you don't know how to use the data you're collecting, it could lead to hurtful or uncomfortable situations for your customers. It could also create legal risk for your business.</p>
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When it comes to data privacy, there is a lot to consider. It's worth the extra time to ensure you are protecting your customers and their data. You can find out more about data privacy by visiting our range of resources listed below.

<https://www.privacy.org.nz/>

<https://www.business.govt.nz/risks-and-operations/it-risk-and-avoiding-scams/protecting-customer-and-employee-information/>

<https://legalvision.co.nz/data-privacy-it/business-privacy-tips-new-zealand/>

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