

## Romaine Solomona

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**From:** Beverley Braybrook  
**Sent:** Monday, May 20, 2019 8:42 AM  
**To:** David Fraser  
**Subject:** FW: New Data and Statistics Legislation Draft Discussion Document and Cabinet Paper

### Beverley Braybrook

Principal Policy Advisor | Legislative Policy – Data System Leadership  
Stats NZ Tatauranga Aotearoa  
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# Unleashing

the power of data to change lives



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**From:** Megan Anderson

**Sent:** Friday, 27 July 2018 10:25 AM

**To:** Vanessa Blackwood <xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx>

**Cc:** Beverley Braybrook <xxxxxxxxxxxxxxxx@xxxxx.xxx.xx>; Victoria Hinson <Victoria.Hinson@stats.govt.nz>; Camille Mosely <camxxxx.xxxxxx@xxxxx.xxxx.xx>

**Subject:** RE: New Data and Statistics Legislation Draft Discussion Document and Cabinet Paper

Hi – no worries at all. And thank you. Once we've had a chance to work through, we'll be in touch.

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**From:** Vanessa Blackwood <[Vanessa.Blackwood@privacy.org.nz](mailto:Vanessa.Blackwood@privacy.org.nz)>

**Sent:** Friday, 27 July 2018 9:25 AM

**To:** Megan Anderson <[Megan.Andexxxx@xxxxx.xxxx.xx](mailto:Megan.Andexxxx@xxxxx.xxxx.xx)>

**Subject:** RE: New Data and Statistics Legislation Draft Discussion Document and Cabinet Paper

Hi Megan,

My apologies – I had this feedback ready to send across to you yesterday but didn't hit 'send' from the drafts!

I have read these documents and think they are generally great in terms of encapsulating the discussion for the general public and raising the right issues/questions.

We're generally comfortable with the way in which the papers refer to privacy issues and the Privacy Act. The public discussion paper appropriately includes mention of the Privacy Act/privacy principles throughout, including noting privacy as an essential safeguard to maintain in any new legislative framework. The Cab paper also notes that final proposals will be informed by the DPUP consultation.

Points to note:

1. *Penalties and compliance*

- The paper calls out the proposed changes in the Privacy Bill, including stronger powers for the Privacy Commissioner, mandatory breach notification reporting, new offences and increased fines

- The paper suggests that the Statistics Act's current compliance and enforcement provisions should be reviewed to update penalties to ensure comparability with similar offences in other legislation (e.g, Privacy Act)

As you may be aware, the Commissioner has made in his submission on the Privacy Bill suggestions to increase the compliance and enforcement provisions contained in the Bill. Depending on the Select Committee recommendations and Parliament decisions, this will be a watching space to see how the existing Bill evolves so as to keep Stats compliance and enforcement provisions consistent with however the Privacy Bill is enacted.

## 2. De-identification and IPP 12 issues

The paper discusses de-identification and confidentialisation. There is a section on p 24 which is slightly inaccurate (paragraph/footnote about IPP 12):

*“Sometimes, as part of the de-identification process, personal or business identifiers are replaced by a randomised unique identifier, which cannot be used to identify individuals or businesses. (Footnote: This is consistent with principle 12 of the Privacy Act which provides that unique personal identifiers can only be disclosed for a purpose that is directly related to one of the purposes for which the unique identifier was assigned.)”*

The paper suggests that de-identification by replacing identifiers with randomly generated numerical identifiers would trigger IPP12. However, that would only be the case if that form of de-identification amounts to the “assignment” of a unique identifier i.e. one assigned for purposes of the operations of the agency that uniquely identifies the individual in relation to that agency.

Even if a unique identifier is assigned for de-identification purposes, IPP 12(4) limits an agency from requiring disclosure of the unique identifier by the **individual** – that would seem unlikely in relation to the release of a de-identified dataset?

We are happy to further discuss this issue with you in order to finalise the discussion paper.

## 3. Privacy Act – risk management

The paper also talks about the Privacy Act in terms of providing a ‘risk management’ approach (page 25: “The Privacy Act allows personal information to be shared and used for statistical or research purposes if the resulting information will not be published in a form that could reasonably be expected to identify the individuals concerned. The approach in the Statistics Act is more absolute and does not allow for a risk management approach in the way that the Privacy Act does.”)

This is reflected in the Cab paper, paragraph 11: “for example, the Statistics Act’s overly restrictive confidentiality provisions do not reflect the risk-based privacy principles in the Privacy Act”.

It somewhat misstates the Privacy Act to refer to the principles as all being ‘risk-based’ or the Privacy Act itself allowing for a risk management approach. Some of the privacy principles do factor in risk management/mitigation (i.e. the exemptions the discussion paper refers to, which allow collection/use/disclosure where the information will be used for statistical or research purposes and will not be published in a form that *could reasonably be expected to identify the individual concerned*). But this doesn’t flow through the Act as a whole – it would be better to refer to the *exemptions* permitting a risk management approach to identification.

Other than these minor points of feedback, we would be keen to keep involved with Stats as this goes through further consultation and policy development.

Warm regards,  
Vanessa

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**From:** Michael Harrison  
**Sent:** Wednesday, 18 July 2018 9:30 a.m.  
**To:** Vanessa Blackwood  
**Cc:** Sophie Richardson  
**Subject:** FW: New Data and Statistics Legislation Draft Discussion Document and Cabinet Paper

Hi Vanessa.

Can you have a look through the below/attached - I'm confirming the due date for comment is 26 July. Let me know if you think we've any comments to make on the paper.

Cheers

Michael

**Michael Harrison**

Team Manager Policy and Technology

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu

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**From:** Megan Anderson [<mailto:Megan.Anderson@stats.govt.nz>]  
**Sent:** Wednesday, 18 July 2018 9:24 a.m.  
**To:** Michael Harrison  
**Cc:** Rachael Milicich; Beverley Braybrook; Victoria Hinson; Camille Mosely  
**Subject:** New Data and Statistic Legislation Draft Discussion Document and Cabinet Paper

Hi Michael

Stats NZ have prepared the attached draft papers and shared these with agencies for formal comment (as per the email below). As we've discussed previously, Stats has been working on developing proposals for new data and statistics legislation to modernise the efficient production of official statistics and to support the trusted and safe use of government-held data for research and analysis. I attach a copy for you. If you, or the Privacy Commissioner, would like to discuss any of the matters in the papers further, please let me know and we can arrange a time.

Kind regards  
Megan

**Megan Anderson**

Manager, Policy & Legislative Review

Data System Leadership  
Stats NZ Tatauranga Aotearoa

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**From:** Beverley Braybrook

**Sent:** Thursday, 12 July 2018 5:57 PM

**To:** Beverley Braybrook <[REDACTED]>

**Cc:** Megan Anderson <[Megan.Anderson@\[REDACTED\]](mailto:Megan.Anderson@[REDACTED])>; Victoria Hinson <[\[REDACTED\]@\[REDACTED\]](mailto:[REDACTED]@[REDACTED])>; Camille Mosely <[camille.mosely@stats.govt.nz](mailto:camille.mosely@stats.govt.nz)>

**Subject:** New Data and Statistics Legislation Discussion Document and Cabinet Paper

[IN-CONFIDENCE]

Kia ora koutou

In 2016, Cabinet agreed to Stats NZ undertaking work to review the Statistics Act 1975 (the Act) with a broad data system focus, recognising that the Act was out-of-date and limiting the potential to increase value for New Zealanders from trusted use of government-held data. The Act supports the production of official statistics, the co-ordination of the official statistics system, and the use of data held by Stats NZ for research and analysis. It applies to all producers of official statistics and enables the collection of, and access to, data from both the public and private sectors.

We undertook early consultation with a range of interested parties (government agencies, non-government organisations, businesses, Māori and iwi representatives and other national statistical offices) over 2016 until mid-2017 to gather perspectives on the strengths and weaknesses of the Act, and the risks and benefits of different reform choices. We've used these insights, as well as academic research and learnings from international jurisdictions including the United Nations Statistics Division and ECE, to develop proposals for change to current legislative settings.

Many of you will have seen an earlier version of these papers, prepared for consultation prior to the 2017 election. We were unable to proceed at that time, due to competing priorities for Ministers leading up to the election and, following that, to a low for the 2018 Census.

**Attached for your feedback is a draft Cabinet paper and draft discussion document for public consultation.** The paper seeks Cabinet agreement to the release of the discussion document for consultation with the public on proposals for new data and statistics legislation for a period of six weeks, from mid-September to the end of October 2018. Submissions will inform final policy proposals, as will continuing consultation with agencies and key stakeholders. We recognise that there is related work across Stats NZ and more widely across government that will also contribute to final decisions, for example, the consultation that the Social Investment Agency is undertaking on trusted data use for the social sector.

**We welcome your comments on the attached documents by 5pm Thursday 26 July 2018.** Feel free to share this material with anyone in your organisation who you think we should consult with on this matter. If you would like to meet, we are happy to do so. We anticipate Ministerial and inter-party consultation will take place at the start of August, and the paper will be considered by GOV on 4 September.

Happy to discuss if you have any questions or comments.

Ngā mihi nui  
Beverley

**Beverley Braybrook**

Principal Policy Advisor

Legislative Review Team

Stats NZ Tatauranga Aotearoa

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Released under the Official Information Act 1982

## Romaine Solomona

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**From:** Eve Kennedy <x@xxx>  
**Sent:** Friday, January 24, 2020 4:46 PM  
**To:** Beverley Braybrook  
**Cc:** Michael Harrison  
**Subject:** RE: New data and statistics legislation Cabinet papers

Hi Beverley,

Thank you for consulting with us on these papers. I have briefed the Commissioner and have the following comment from him for inclusion in the first paper:

*“The Privacy Commissioner supports modernising the data and statistics legislation to ensure that high-quality official statistics continue to be produced while balancing important privacy rights. The Commissioner is pleased to see that privacy protective features will be present in the draft Bill and supports the additional transparency requirements discussed in the papers. He is happy to work with officials as they progress work on the policy settings for privacy matters.”*

Please let me know if you have any questions on the above.

Kind regards,

Eve

### **Eve Kennedy, Policy Adviser**

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**From:** Beverley Braybrook <Beverley.Brxxxxxxx@xxxxx.xxx.nz>

**Sent:** Wednesday, 15 January 2020 5:44 pm

**To:** xxxxx.xxxxxxxx@xxxx.xxx.xx; AJ.xxxxxxxx@xxxx.xxx.xx; mark.gordon@mbie.govt.nz; Anne.Harland@mbie.govt.nz; anna.cook@customs.govt.nz; xxxxxx.xxxxxx@xxx.xxx.xx; Peter.Salter0xx@xxx.xxx.xx; Lena.Saxxxxxxxx@xxx.xxx.xx; Gabrielle.Wilxxx@xxx.xxx.xx; Doug Lambert <doug.lamberx@xxx.xxx.nz>; xxxx.xxxxxxx@xxx.xxx.xx; Chris.Gillixx@xxx.xxx.xx; Echo.Brooke-White@ird.govt.nz; xxxxxxxx.xxx@xxx.xxx.xx; Susanna.Berxx@xxx.xxx.nz; iwxxxxxxx@xxx.xxx.xx; Philip.MEREDITH@Corrections.govt.nz; Victoria Croucher <Victoria.Croucher@dia.govt.nz>;

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**Cc:** Megan Anderson <Megan.Andxxxxx@xxxxx.xxxx.xx>; Marie Weavers <xxxxx.xxxxxx@xxxxx.xxxx.nz>

**Subject:** New data and statistics legislation Cabinet papers

Kia ora koutou

**Attached for your feedback are four draft Cabinet papers seeking agreement to policy proposals for new data and statistics legislation.**

Paper 1 – Overview of policy decisions: discusses the need for new data and statistics legislation and seeks agreement to the purpose of new legislation

Paper 2 – Official statistics system: discusses policy proposals for modernising the official statistics system

Paper 3 – Research and analysis: discusses policy proposals for sharing, integrating and accessing data for research and analysis

Paper 4 – Obligations and sanctions: discusses policy proposals for modernising offences and penalties and providing for more proportionate responses to breaches of obligations

**We welcome your comments on the attached documents by 5pm Friday 24 January 2020.** Feel free to share this material with anyone in your organisation who you think we should consult with on this matter. If you would like to meet, we are happy to do so. We anticipate Ministerial and inter-party consultation will take place in the middle of February, and the paper will be considered by GOV on 5 March.

#### Further information

In 2016, Cabinet agreed to Stats NZ undertaking work to review the Statistics Act 1975 (the Act) with a broad data system focus, recognising that the Act was out-of-date and limiting the potential to increase value for New Zealanders from trusted use of government-held data. The Act supports the production of official statistics, the co-ordination of the official statistics system, and the use of data held by Stats NZ for research and analysis. It applies to all producers of official statistics and enables the collection of, and access to, data from both the public and private sectors.

We undertook public consultation on proposals for new data and statistics legislation between 27 September and 9 November 2018. Our [summary of submissions](#) was released in April 2019.

While the policy underpinning the Statistics Act is sound, the Act is out of date and doesn't reflect the modern drafting expected of legislation today. The policy settings that enable production of high-quality official statistics and safe access to data for research and analysis are not changing; rather, the focus is on modernising existing provisions, increasing clarity and transparency, and reflecting best practice.

New data and statistics legislation will:

- modernise roles and responsibilities for the Minister and Government Statistician

- recognise the Māori-Crown relationship and what this means for Māori data and statistics
- acknowledge the role and responsibilities other agencies play in collecting and sharing data for production of official statistics
- recognise the variety of data sources for official statistics (surveys, administrative data, other data sources)
- enable Stats NZ to continue sharing data collected for official statistics with other government agencies for specific purposes (eg, joint collections)
- expand provisions that enable data access for research and analysis (eg, reflecting tikanga framework developed by Stats NZ in partnership with Māori)
- modernise obligations and sanctions with new lower level enforcement tools and sanctions for less serious breaches.

Please note that I will be on leave from Friday 17 January to Wednesday 22 January. If you would like to discuss any questions or concerns, please contact Megan Anderson or Marie Weavers in my absence.

Many thanks  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
Principal Policy Advisor | Kaitohutohu Kaupapahere Mātāmua  
Legislative Policy | Kaupapahere Ture  
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## Unleashing

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## Romaine Solomona

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**From:** Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>  
**Sent:** Monday, March 1, 2021 3:38 PM  
**To:** David Fraser  
**Cc:** Gareth McGuinness; Beth Le Roux; Eleisha Hawkins; Craig Jones; Peter Mee; Nienke van Dijken  
**Subject:** RE: Draft Cabinet Paper for agency consultation - Data and Statistics Legislation: Supplementary policy proposals

Kia ora Dave

Thanks for the opportunity to provide comment from the Office of the Privacy Commissioner (OPC) on the draft Cabinet paper on supplementary policy proposals for new data and statistics legislation.

OPC supports the proposals in the paper, noting that they appear to include safeguards necessary to protect privacy of personal information. We look forward to the opportunity to review the details of the legislation when we receive the advanced draft of the Bill, which we understand Stats NZ should be able to provide in the week ending 12 March.

Ngā mihi, nā

Ewan

### Ewan Lincoln

Senior Policy Adviser | Kaitohutohu Matua

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**From:** David Fraser <xxxxx.xxxxxxx@xxxxx.xxxx.xx>

**Sent:** Tuesday, 23 February 2021 1:20 pm

**To:** Brian.Hesketh@acc.co.nz; Abbey.Mennie@acc.co.nz; Simon.Lawrence2@acc.co.nz;

xxxxxx.xxxxxxxxxxxx@xxx.xx.xx; Sebastian.Morgan-Lynch@acc.co.nz; Chris McDowall <chris.mcdowall@mbie.govt.nz>; AJ.Millward@mbie.govt.nz; Evelyn Wareham <evelyn.wareham@mbie.govt.nz>; eileen.basher@mbie.govt.nz; Tony Waldegrave <xxxx.xxxxxxxxxxxx@xxxx.xxxx.xx>; mark.gordon@mbie.govt.nz; Anne Harland <Anne.Harland@mbie.govt.nz>; Phoebe.Chan@mbie.govt.nz; david.paterson@mbie.govt.nz; paul.merwood@mbie.govt.nz; Jonathan.Morten@customs.govt.nz; mathew.black@customs.govt.nz; Janine.Smith@customs.govt.nz; Nic.Blakxxxxxxx@xxx.xxxx.xx; Pennie.Pearxxxxx@xxx.xxxx.xx; Steven.Sue00x@xxx.xxxx.nz; Peter Salter <peter.salter001@msd.govt.nz>; xxxx.xxxxxxxxxxxx@xxx.xxxx.xx; xxxxxxxx.xxxxxx@xxx.xxxx.xx; Rob Hodgson <xxx.xxxxxxxxxxxx@xxx.xxxx.xx>; Vaughan.Doxxxxx@xxx.xxxx.xx; xxx@xxx.xxvt.nz; xxxxxxxx.xxxxxx@xxx.xxxx.xx; Martin.Neylan@ird.govt.nz; Doug Lambert <doug.lamberx@xxx.xxxx.nz>; Tina MacLean <tina.maclean@ird.govt.nz>; Echo.Brooke-xxxxx@xxx.xxxx.xx; xxxxxxxx.xxxx@xxx.xxxx.xx; Susanna.Berxx@xxx.xxxx.nz; iwxxxxxxxxxxx@xxx.xxxx.xx; Elaine Wright <ewright@doc.govt.nz>; hthygesen@doc.govt.nz; salderson@doc.govt.nz; Philip.MEREDITH@Corrections.govt.nz; peter.johnston@corrections.govt.nz; Alastair.Turrell@corrections.govt.nz; Russell Cooke <russell.cookx@xxx.xxxx.nz>; andrew.d.henderson@dia.govt.nz; Joanne Koreman <joanne.koreman@dia.govt.nz>; Antony Moss <antony.xxxx@xxx.xxxx.nz>; xxx.xxxxx@xxx.xxxx.xx; andrei.zubxxx@xxx.xxxx.xx; Jonathon.Arrxxx@xxx.xxxx.nz; xxxxx.xxxxxx@xxx.xxxx.xx; Scott.Wilsxx@xxx.xxxx.xx; jason.raven@dpmc.govt.nz; Jonno Ingerson <jonno.ingerson@hud.govt.nz>; Adam Brown <adam.brxxx@xxx.xxvt.nz>; wterry@linz.govt.nz; xxxxxxxx@xxxx.xxxx.xx; Ruth Fischer-Smith <rfischer-smith@linz.govt.nz>; TJxxxxxx@xxxx.xxxx.xx; xxxxx.xxxxxx@xxx.xxxx.xx; Wido.vanLixx@xxx.xxxx.nz; Dan Elder <dan.elder@mfe.govt.nz>; Laura.Hardinx@xxx.xxxx.nz; cindy.obrien@education.govt.nz; David.Sanders@education.govt.nz; Cabinet.Committee@education.govt.nz; Antony.Harvey@education.govt.nz; Selena Smeaton <selena.smeaton@education.govt.nz>; Alex.Brunnt@education.govt.nz; Shona xxxxxx@xxxxxxxxxxx.xxxx.xx; ben.omeara@education.govt.nz; james.messent@mfat.govt.nz; xxxxx.xxxxxxx@xxxx.xxxx.nz; xxx.xxxxxx@xxxx.xxxx.xx; Sam.Verexxx@xxxx.xxxx.nz; kerryn.foxxxx@xxxx.xxxx.xx; dean.fxhx@xxxx.xxvt.nz; Oliver.Poppelwell@health.govt.nz; Dean.rutherford@health.govt.nz; xxxxxxxxxxx@xxx.xxxx.nz; Maree\_Robexxx@xxx.xxxx.xx; Helen.Aki@justice.govt.nz; Jones, Suzanne <suzanne.jones@justice.govt.nz>; Ashcroft, Claire <claire.ashcroft@justice.govt.nz>; Paul.Henderson@justice.govt.nz; Lauren.Zwi@justice.govt.nz; Anna.Johnston@justice.govt.nz; mppadvice@mpp.govt.nz; tevaerangi.minster@mpp.govt.nz; deb.potter <deb.potter@women.govt.nz>; Kristina.Temel@elections.govt.nz; anthony.pengelly@elections.govt.nz; sheree.demalmanche@police.govt.nz; juliet.armstrong@police.govt.nz; Daniel.Morrison@police.govt.nz; xxxxxxxx.xxxxxxx@xxxxxx.xxxx.xx; tanya.roth@police.govt.nz; Ann.Walker@ot.govt.nz; Vasantha Krishnan <Vasantha.krisxxx@xx.xxvt.nz>; xxxxx.xxxxxx@xx.xxvt.nz; xxxxxxxx.xxxx@xx.xxxx.xx; daniel.mixxx@xx.xxxx.nz; Ross.boyd@publicservice.govt.nz; hugo.vitalis@publicservice.govt.nz; meredith.obrien@publicservice.govt.nz; heather.bagott@publicservice.govt.nz; Michael Eglinton [TSY] <michael.eglinton@treasury.govt.nz>; Shaan.Badenxxxxx@xxxxxxxxxxx.xxxx.nz; s 6(a) @ncsc.govt.nz; s 6(a) @ncsc.govt.nz; Matt Haigh <matt.haigh@rbnz.govt.nz>; steffi.schuster@rbnz.govt.nz; tia.warbrick@justice.govt.nz; ngapera.hoerara@justice.govt.nz; Andrew.Hampton@tearawhiti.govt.nz; Papexxxxxxxxx@xxxxxxxxxxx.xxxt.nz; Pauline.Courtney@crownlaw.govt.nz; Eve Kennedy <Eve.Kennedy@privacy.org.nz>; Ewan Lincoln <Ewan.Lincoln@xxxxxxxx.xgx.nz>; Michael Harrison <Michael.Harrxxx@xxxxxxxx.xxx.xx>; s 6(a) @gcsb.govt.nz; nadia.ward@tpk.govt.nz; Darin Bishop <bishd@tpk.govt.nz>

**Cc:** Gareth McGuinness <Gareth.McGuixxxx@xxxx.xxxx.xx>; Beth Le Roux <Beth.LeRoux@stats.govt.nz>; Eleisha Hawkins <eleisha.hawkins@stats.govt.nz>; Craig Jones <Craig.Jonxx@xxxx.xxxx.xx>

**Subject:** Draft Cabinet Paper for agency consultation - Data and Statistics Legislation: Supplementary policy proposals

Kia Ora koutou,

As foreshadowed last week, **Attached for your feedback is a draft Cabinet Paper seeking agreement to progress a series of supplementary policy proposals for new data and statistics legislation.**

**We welcome your comments on the attached documents by 5pm Tuesday 2 March 2021.** Feel free to share this material with anyone in your organisation who you think we should consult with on this matter. If you would like to meet, we are happy to do so. We anticipate Ministerial and inter-party consultation will take place in the middle of March, and that the paper will be considered by DEV on 7 April.

[Further information](#)

In 2016, Cabinet agreed to Stats NZ undertaking work to review the Statistics Act 1975 (the Act) with a broad data system focus, recognising that the Act was out-of-date and limiting the potential to increase value for New Zealanders from trusted use of government-held data. The Act supports the production of official statistics, the co-ordination of the official statistics system, and the use of data held by Stats NZ for research and analysis. It applies to all producers of official statistics and enables the collection of, and access to, data from both the public and private sectors.

In March 2020, Cabinet agreed to policy proposals and the drafting of a new Data and Statistics Act. Publicly released Cabinet Papers and minutes are available on the [Stats NZ website](#).

We undertook public consultation on proposals for new data and statistics legislation between 27 September and 9 November 2018. Our [summary of submissions](#) was released in April 2019.

While the policy underpinning the Statistics Act is sound, the Act is out of date and doesn't reflect the modern drafting expected of legislation today. The policy settings that enable production of high-quality official statistics and safe access to data for research and analysis are not changing; rather, the focus is on modernising existing provisions, increasing clarity and transparency, and reflecting best practice.

New data and statistics legislation will:

- modernise roles and responsibilities for the Minister and Government Statistician
- recognise the Māori-Crown relationship and what this means for Māori data and statistics
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- expand provisions that enable data access for research and analysis (eg, reflecting tikanga framework developed by Stats NZ in partnership with Māori)
- modernise obligations and sanctions with new lower level enforcement tools and sanctions for less serious breaches.

Ngā mihi nui,

Dave

**Dave Fraser**

Senior Policy Advisor – Legislative Policy

Data System Leadership

Stats NZ Tatauranga Aotearoa

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## Romaine Solomona

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**From:** Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>  
**Sent:** Monday, June 14, 2021 9:22 AM  
**To:** David Fraser  
**Cc:** Emmett Geoghegan; Liz MacPherson; Peter Mee; Justin Kim  
**Subject:** RE: Data and Statistics Bill - draft Bill for agency consultation

Kia ora Dave

Thanks for the opportunity to provide comment from the Office of the Privacy Commissioner (OPC) on the draft Data and Statistics Bill. OPC also appreciates the previous opportunities we have had to discuss the Bill with Stats NZ.

Apologies for getting our comments to you after the deadline, however our Assistant Commissioner Liz MacPherson did preview these comments in a meeting with your Chief Legal Officer, Emmett, last Friday.

OPC does not have any major concerns about the draft Bill.

### **Relationship with the Privacy Act**

We note that the Bill does not expressly deal with the relationship with the Privacy Act. To the extent that the Bill authorises or requires personal information to be collected, used or disclosed, it will override the Privacy Act. We take it that this is the policy intent (and represents no change from the current position under the Statistics Act).

However, to avoid doubt, it could be helpful to clearly state the relationship with the Privacy Act in the Bill. We also note below one specific provision where the application of the Privacy Act seems unclear.

The Bill uses the terms 'consent' and 'agree(ment)' at various places in relation to individuals or organisations authorising the use or disclosure of information they have provided (e.g. cls 25(8)(a), 27(2)(b), 37(2)(a), 38(3), 51(2)(a)). We note that the equivalent term in the Privacy Act is 'authorise'. Stats NZ could consider whether 'authorise' should be used in the Data and Statistics Bill for consistency across legislation, and in any case it may be advisable to use a single term consistently within the Bill.

### **Delegation of functions or powers of the Statistician**

Clause 16 provides a broad power for the Statistician to delegate functions or powers under the Data and Statistics Act or any other Act. This power does not exist under the current Statistics Act. We note that it is subject to some restrictions, and to clauses 2 to 4 of schedule 6 of the Public Service Act 2020.

OPC would expect anyone exercising functions or powers under delegation from the Statistician to be required to meet the same high standards of independence and careful handling of data as the Statistician.

Could Stats NZ please provide OPC with some analysis of the protections around the exercise of the power of delegation, particularly in relation to the independence of the Statistician and obligations of confidentiality?

The power of delegation would presumably be subject to:

- clauses 23 and 24 with regard to the Statistician authorising public sector agencies to request information on behalf of the Statistician
- clauses 52 and 53 with regard to the Statistician authorising public sector agencies to deal with requests for access to data held by these agencies for the purposes of research.

Is this correct? We note that these clauses impose restrictions on public sector agencies carrying out these functions.

We would also expect that delegated functions and powers would be subject to the certificate of confidentiality provisions in clause 40.

### Specific comments

We have the following specific comments on the draft Bill:

- Clause 37(2)(b) allows the Statistician to publish or disclose information, without ensuring that it is published in a form that could not reasonably be expected to identify an individual, if the information is publicly available from other sources. Consideration could be given to requiring that, in this circumstance, the publication or disclosure would not be unfair or unreasonable (see privacy principle 11(1)(d) in the Privacy Act 2020).
- Clause 39 provides that the Statistician may authorise the disclosure of a document or class of documents that the Statistician has (in consultation with the Chief Archivist) classified as a historical document or class of historical documents. OPC comments that:
  - It is unclear which documents this clause relates to (in contrast to the existing section 37D, which relates to 'schedules', a defined term in the Act).
  - The clause provides no indication of the criteria for classifying documents as historical documents. (Note also that the current section 37D applies only to schedules that are at least 100 years old, but there is no such restriction in the Bill.)
  - It seems likely that the documents to which clause 39 applies could include personal information. Accordingly, some limits are needed on the power of the Statistician to authorise their disclosure.
- Clause 48(c) provides that the Statistician must take into account the manner in which data will be stored, accessed and used before determining whether access to data for research is subject to appropriate privacy, confidentiality and security protections. OPC suggests that the matters to be considered by the Statistician should include that the individual, agency or organisation has appropriate policies and processes for assessing how long the data should be retained for and how it should be securely deleted when no longer required.
- Clause 52(3)(a) and (b) provides that nothing in a notice given under clause 52(1) limits or affects a legislative provision that authorises or requires data to be made available, or imposes a prohibition or restriction on the availability of data. It is unclear how this provision interacts with the Privacy Act, which both requires personal information to be made available (under privacy principle 6) and restricts the disclosure of personal information (under privacy principle 11).

We would be happy to discuss our comments, or any other issues, with Stats NZ if that would be helpful.

Noho ora mai, nā

Ewan

**Ewan Lincoln** ([he/him](#))

Senior Policy Adviser | Kaitohutohu Matua

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu

PO Box 10094 | Wellington 6143 | New Zealand

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**From:** David Fraser <xxxxx.xxxxxxx@xxxxx.xxxx.xx>

**Sent:** Friday, 28 May 2021 2:55 pm

**To:** xxx.xxxxxxx@xxx.xxxx.xx; Pennie.Pearce002@msd.govt.nz; xxxxxxx.xxxxx@xxx.xxxx.xx; Peter Salter <peter.salterxxx@xxx.xxxx.xx>; xxx.xxxxxxx@xxx.xxxx.xx; xxxxxxx.xxxxx@xxx.xxxx.xx; Rob Hodgson <xxx.xxxxxxx@xxx.xxxx.xx>; shama.kukkady0xx@xxx.xxxx.xx; xxxxxxx.xxxxx@xxx.xxxx.xx; xxx@xxx.xxvt.nz; helen.kennard@ot.govt.nz; daniel.xxxxx@xx.xxvt.nz; Brian.Hesketh@acc.co.nz; Abbey.Mennie@acc.co.nz; Simon.Lawrence2@acc.co.nz; zeeman.VanDerMerwe@acc.co.nz; Sebastian.Morgan-Lynch@acc.co.nz; xxxxxxx.xxxxx@xxx.xxxx.xx; Martin.Neylan@ird.govt.nz; Doug Lambert <doug.lamberx@xxx.xxxx.nz>; Tina MacLean <tina.maclean@ird.govt.nz>; Echo.Brooke-xxxxx@xxx.xxxx.xx; xxxxxxx.xxxx@xxx.xxxx.xx; Susanna.Berxx@xxx.xxxx.nz; iwxxxxxx@xxx.xxxx.xx; Elaine Wright <ewright@doc.govt.nz>; hthygesen@doc.govt.nz; salderson@doc.govt.nz; Philip.MEREDITH@Corrections.govt.nz; peter.johnston@corrections.govt.nz; Alastair.Turrel @corrections.govt.nz; jason.raven@dpmc.govt.nz; Jonno Ingerson <jonno.ingerson@hud.govt.nz>; Adam Brown <adam.brxxx@xxx.xxvt.nz>; xxxxx.xxxxx@xxx.xxxx.xx; xxx.xxxxxxx@xxx.xxxx.nz; Neil Hurley <neil.hurley@mfe.govt.nz>; Dan Elder <dan.elder@mfe.govt.nz>; Laura.Hardinx@xxx.xxxx.nz; xxxxx.xxxxx@xxxx.xxxx.xx; Tracy.Parsons@mfat.govt.nz; Phxx.xxxxx@xxxx.xxxx.xx; Sam.Verevis@mfat.govt.nz; kerryn.foxxx@xxxx.xxxx.xx; mppadvice@mpp.govt.nz; tevaerangi.minster@mpp.govt.nz; Terina.xxxxx@xxx.xxxx.nz; Ana Koloto <ana.koloto@mpp.govt.nz>; deb.potter <deb.potter@women.govt.nz>; she ee.demalmanche@police.govt.nz; xxxxxxx.xxxxx@xxxxxx.xxxx.xx; Daniel.Morrison@police.govt.nz; Adrianx.xxxxxxx@xxxxxx.xxxx.xx; tanya.roth@police.govt.nz; hugo.vitalis@publicservice.govt.nz; meredith.obrien@publicservice.govt.nz; Michael Eglinton [TSY] <michael.eglinton@treasury.govt.nz>; Shaan.Badenhoxx@xxxxxx.xxxx.xx; s 6(a) @ncsc.govt.nz; s 6(a) @ncsc.govt.nz; Matt Haigh <matt.haixx@xxx.xxvt.nz>; steffi.schuster@rbnz.govt.nz; ngapera.hoerara@justice.govt.nz; Andrew.Hampton@tearawhiti.govt.nz; Papexxxxxxx@xxxxxx.xxxx.xx; arnu.turvey@tearawhiti.govt.nz; mark.bryant@crownlaw.govt.nz; Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>; nadia.ward@tpk.govt.nz; Darin Bishop <bishd@tpk.govt.nz>

**Cc:** Beverley Braybrook <xxxxxx.xxxxxxx@xxxxx.xxxx.xx>; Jacqueline Derby <Jacqueline.Derby@pco.govt.nz>; Anne O'Driscoll <Anne.O'xxxxxx@xxx.xxxx.xx>

**Subject:** Data and Statistics Bill - draft Bill for agency consultation

Kia Ora Koutou

**Attached for your feedback is a draft Data and Statistics Bill**

The Data and Statistics Bill will replace the Statistics Act 1975 with up-to-date legislation that has the flexibility to respond to advances in digital and data technology and changing information needs and sources. It will provide the authorising framework for Stats NZ to exercise its core functions of producing statistics, leading and coordinating the official statistics system, and integrating and providing safe access to data for research.



**We welcome your comments on the attached Bill by COP Friday 11 June 2021.** Feel free to share the draft Bill with others in your organisation that we should consult with. If you would like to meet, we are happy to do so. We expect to provide the final draft Bill and Cabinet Paper in July 2021 before taking the paper to LEG.

## More on the Bill

The Bill:

- recognises the Crown's responsibility to consider and provide for Māori interests, including by providing opportunities for partnering and early and meaningful engagement with Māori, and Māori access to data held by government.
- recognises the importance of administrative data as a source for official statistics and enables the most appropriate collection method (not just surveys) and information source to be used for official statistics.
- provides statutory authority for other government agencies to collect information on behalf of the GS for official statistics and modernises information sharing when information is collected jointly.
- continues to require the Government Statistician to undertake a Census every five years, with requirements for consultation before, and a review following, each Census.
- requires the Government Statistician (GS) to lead development of, and advise the Minister on a regular multi-year cross-government data and statistical programme.
- requires government agencies to follow statistical best practice (written standards) where appropriate.
- includes safeguards for sharing, integrating, and accessing data for research and analysis, with additional safeguards for access by overseas-based researchers, and new requirements for transparency.
- modernises and updates offences and penalties, with the addition of infringement notices for low level non-compliance with obligations to provide information, and enforceable compliance notices related to obligations to safeguard and appropriately use data.

## We draw your attention to the following Parts and clauses which may be of interest to your organisation

- Clause 4 – Treaty of Waitangi (Te Tiriti o Waitangi)
- Clause 7 – meaning of public sector agency
- Clauses 13-14 – Functions of the Government Statistician, and duties relating to the Treaty of Waitangi (Te Tiriti o Waitangi)
- Clauses 17-20 – Multi-year data and statistical work programme
- Part 3 – Collection of information and statistical confidentiality
- Part 4 – Official statistics (particularly clause 43 – obligations on public sector agencies)
- Part 5 – Access to data for research (including ability of public sector agencies to use provisions when providing access to data)
- Part 6 – Offences and enforcement (includes new compliance notices and infringement notices)
- Clause 87 – Government Statistician may provide written standards
- Schedule 2 – Amendments to remove barriers in agency legislation
  - Note that we are still working with PCO on how best to give effect to removing barriers
- Schedule 3 – Amendments relating to references to products published by Stats NZ

### Further information

In 2016, Cabinet agreed to Stats NZ undertaking a review of statistics and related data legislation [CAB-16-Min-0313].

We undertook public consultation on proposals for new data and statistics legislation between 27 September and 9 November 2018. Our [summary of submissions](#) was released in April 2019.

In March 2020 Cabinet agreed to a suite of policy proposals and to the drafting of a new Data and Statistics Bill to replace the Act. Copies of the Cabinet Papers, Cabinet Minutes, and Regulatory Impact Analysis are [available on our website](#).

In April 2021 Cabinet agreed to a number of supplementary policy proposals to give effect to modernised offences and penalties and new compliance tools, remove inadvertent barriers in other legislation that prohibit or restrict the provision of data to Stats NZ, and address other issues that arose during Bill drafting. The paper should be available shortly [on our website](#).

Please let me know if you have any questions or concerns.

Ngā mihi nui

Dave

**Dave Fraser** (pronouns: he/him/his)

Senior Policy Advisor – Legislative Policy | Kaitohutohu Matua – Kaupapa Ture

Stats NZ | Tatauranga Aotearoa | [stats.govt.nz](https://stats.govt.nz) | +64 4 931 4353

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## Romaine Solomona

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**From:** David Fraser  
**Sent:** Thursday, July 22, 2021 2:54 PM  
**To:** Ewan Lincoln  
**Cc:** Emmett Geoghegan; Liz MacPherson; Peter Mee; Justin Kim; Beverley Braybrook  
**Subject:** RE: Data and Statistics Bill - draft Bill for agency consultation  
**Attachments:** Draft Bill - Agency responses - Key messages.docx

Kia Ora,

Thank you for sending through your feedback on the draft Data and Statistics Bill.

Where appropriate, we are working with PCO to incorporate changes to the draft Bill based on feedback provided by agencies, which are generally in the nature of minor and technical fixes. We are also making some adjustments to Te Tiriti-related clauses.

We intend to undertake agency consultation on the draft Cabinet paper and Bill for introduction next week, with the aim of the Bill being considered at LEG on 26 August 2021. We will include your agency in this consultation.

Please see below in red for our response to your feedback.

Attached is some general information about how we have responded to agency feedback.

Please let me know if you have any questions.

Ngā mihi nui,

Dave

**Dave Fraser** (pronouns: he/him/his)  
Senior Policy Advisor – Legislative Policy | Kaitohutohu Matua – Kaupapa Ture  
Stats NZ | Tauranga Aotearoa | [stats.govt.nz](https://stats.govt.nz) | +64 4 931 4353

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**From:** Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>  
**Sent:** Monday, 14 June 2021 9:22 AM  
**To:** David Fraser <xxxxx.xxxxxx@xxxxx.xxxx.xx>  
**Cc:** Emmett Geoghegan <emmett.geoghegan@stats.govt.nz>; Liz MacPherson <Liz.MacPherxxx@xxxxxxx.xxx.xx>; Peter Mee <Peter.Mee@privacy.org.nz>; Justin Kim <Justin.Kim@privacy.org.nz>  
**Subject:** RE: Data and Statistics Bill - draft Bill for agency consultation

Kia ora Dave

Thanks for the opportunity to provide comment from the Office of the Privacy Commissioner (OPC) on the draft Data and Statistics Bill. OPC also appreciates the previous opportunities we have had to discuss the Bill with Stats NZ.

Apologies for getting our comments to you after the deadline, however our Assistant Commissioner Liz MacPherson did preview these comments in a meeting with your Chief Legal Officer, Emmett, last Friday.

OPC does not have any major concerns about the draft Bill.

### **Relationship with the Privacy Act**

We note that the Bill does not expressly deal with the relationship with the Privacy Act. To the extent that the Bill authorises or requires personal information to be collected, used or disclosed, it will override the Privacy Act. We take it that this is the policy intent (and represents no change from the current position under the Statistics Act).

However, to avoid doubt, it could be helpful to clearly state the relationship with the Privacy Act in the Bill. We also note below one specific provision where the application of the Privacy Act seems unclear.

The Bill uses the terms 'consent' and 'agree(ment)' at various places in relation to individuals or organisations authorising the use or disclosure of information they have provided (e.g. cls 25(8)(a), 27(2)(b), 37(2)(a), 38(3), 51(2)(a)). We note that the equivalent term in the Privacy Act is 'authorise'. Stats NZ could consider whether 'authorise' should be used in the Data and Statistics Bill for consistency across legislation, and in any case it may be advisable to use a single term consistently within the Bill.

Thank you for your feedback – please see the attached messages on alignment with other legislative regimes.

We have raised with PCO the matters regarding “consent” and “agreement” and will note any changes in the next draft of the Bill.

### **Delegation of functions or powers of the Statistician**

Clause 16 provides a broad power for the Statistician to delegate functions or powers under the Data and Statistics Act or any other Act. This power does not exist under the current Statistics Act. We note that it is subject to some restrictions, and to clauses 2 to 4 of schedule 6 of the Public Service Act 2020.

Thank you. The intent is to align the GS's delegation provisions with those of Chief Executives in the Public Service Act as much as possible.

OPC would expect anyone exercising functions or powers under delegation from the Statistician to be required to meet the same high standards of independence and careful handling of data as the Statistician.

We agree. Where a delegate handles any information collected under the Data and Statistics Act it would be expected that they maintained statistical confidentiality through completing a certificate of confidentiality. We note that they would still be subject to any related offences and penalties.

Could Stats NZ please provide OPC with some analysis of the protections around the exercise of the power of delegation, particularly in relation to the independence of the Statistician and obligations of confidentiality?

As above, any delegate undertaking work on behalf of the Government Statistician would be required to sign a certificate of confidentiality, and would be under obligations to use data safely.

Generally, were the GS to delegate an authority to collect data for production of official statistics to another CE, it would be on the basis that it was more efficient for that agency to collect the data than the GS. In every case, the expectation is that, post collection, the data is securely provided to the GS to produce official statistics.

We note that the GS is still ultimately responsible and accountable for actions undertaken by a delegate. Were the GS to delegate production of a set of statistics to another CE, there would be an expectation that the delegate observe professional independence, particularly around release practices.

The power of delegation would presumably be subject to:

- clauses 23 and 24 with regard to the Statistician authorising public sector agencies to request information on behalf of the Statistician
- clauses 52 and 53 with regard to the Statistician authorising public sector agencies to deal with requests for access to data held by these agencies for the purposes of research.

Is this correct? We note that these clauses impose restrictions on public sector agencies carrying out these functions.

Yes, but it would depend on what functions were delegated.

We would also expect that delegated functions and powers would be subject to the certificate of confidentiality provisions in clause 40.

Yes, any person handling data collected by or provided to the GS would be required to complete a certificate of confidentiality.

### Specific comments

We have the following specific comments on the draft Bill:

- Clause 37(2)(b) allows the Statistician to publish or disclose information, without ensuring that it is published in a form that could not reasonably be expected to identify an individual, if the information is publicly available from other sources. Consideration could be given to requiring that, in this circumstance, the publication or disclosure would not be unfair or unreasonable (see privacy principle 11(1)(d) in the Privacy Act 2020).

Thank you. We are discussing this matter with PCO.

- Clause 39 provides that the Statistician may authorise the disclosure of a document or class of documents that the Statistician has (in consultation with the Chief Archivist) classified as a historical document or class of historical documents. OPC comments that:
  - It is unclear which documents this clause relates to (in contrast to the existing section 37D, which relates to 'schedules', a defined term in the Act).
  - The clause provides no indication of the criteria for classifying documents as historical documents. Note also that the current section 37D applies only to schedules that are at least 100 years old, but there is no such restriction in the Bill.)
  - It seems likely that the documents to which clause 39 applies could include personal information. Accordingly, some limits are needed on the power of the Statistician to authorise their disclosure.

We have worked closely with the Department of Internal Affairs on these provisions. In general, public records are required to be transferred to Archives NZ after 25 years (or earlier by agreement) but schedules relating to a Census must be retained for 100 years after the relevant Census was held. Over 3,000 boxes of Census records from 1966-1996 are stored in Christchurch; some boxes have been damaged and are at risk of further damage and deterioration. Cabinet agreed to amendments to the Public Records Act in March 2021 (GOV-21-MIN-0012) to expedite transfer of these records so that they can be kept in more suitable conditions. Note that they will be transferred with a restricted access status.

- Clause 48(c) provides that the Statistician must take into account the manner in which data will be stored, accessed and used before determining whether access to data for research is subject to appropriate privacy, confidentiality and security protections. OPC suggests that the matters to be considered by the Statistician should include that the individual, agency or organisation has

appropriate policies and processes for assessing how long the data should be retained for and how it should be securely deleted when no longer required.

Thank you. We think these matters are covered off in the draft clause. Such considerations will be set out in more detail in the guidance or operational rules to support implementation of the access framework.

- Clause 52(3)(a) and (b) provides that nothing in a notice given under clause 52(1) limits or affects a legislative provision that authorises or requires data to be made available, or imposes a prohibition or restriction on the availability of data. It is unclear how this provision interacts with the Privacy Act which both requires personal information to be made available (under privacy principle 6) and restricts the disclosure of personal information (under privacy principle 11).

Thank you. We are discussing this matter with PCO.

We would be happy to discuss our comments, or any other issues, with Stats NZ if that would be helpful.

Noho ora mai, nā

Ewan

**Ewan Lincoln** ([he/him](#))

Senior Policy Adviser | Kaitohutohu Matua

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu

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online. Have a privacy question? [AskUs](#)

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**Sent:** Friday, 28 May 2021 2:55 pm

**To:** xxx.xxxxxxxx@xxx.xxxx.xx; Pennie.Pearce002@msd.govt.nz; xxxxx.xxxxxx@xxx.xxxx.xx; Peter Salter <peter.salterxxx@xxx.xxxx.xx>; xxx.xxxxxxxx@xxx.xxxx.xx; xxxxxxxx.xxxxxx@xxx.xxxx.xx; Rob Hodgson <xxx.xxxxxxxx@xxx.xxxx.xx>; shama.kukkady0xx@xxx.xxxx.xx; xxxxxxxx.xxxxxx@xxx.xxxx.xx; xxx@xxx.xxvt.nz; helen.kennard@ot.govt.nz; daniel.xxxxx@xx.xxvt.nz; Brian.Hesketh@acc.co.nz; Abbey.Mennie@acc.co.nz; Simon.Lawrence2@acc.co.nz; zeeman.VanDerMerwe@acc.co.nz; Sebastian.Morgan-Lynch@acc.co.nz; xxxxxxxx.xxxxx@xxx.xxxx.xx; Martin.Neylan@ird.govt.nz; Doug Lambert <doug.lamberx@xxx.xxxx.nz>; Tina MacLean <tina.maclean@ird.govt.nz>; Echo.Brooke-xxxxx@xxx.xxxx.xx; xxxxxxxx.xxxx@xxx.xxxx.xx; Susanna.Berxx@xxx.xxxx.nz; iwxxxxxxx@xxx.xxxx.xx; Elaine Wright <ewright@doc.govt.nz>; hthygesen@doc.govt.nz; salderson@doc.govt.nz; Philip.MEREDITH@Corrections.govt.nz; peter.johnston@corrections.govt.nz; Alastair.Turrell@corrections.govt.nz; jason.raven@dpmc.govt.nz; Jonno

Ingerson <jonno.ingerson@hud.govt.nz>; Adam Brown <adam.brxxx@xxx.xxvt.nz>; xxxxx.xxxxxx@xxx.xxxx.xx; xxx.xxxxxx@xxx.xxxx.nz; Neil Hurley <neil.hurley@mfe.govt.nz>; Dan Elder <dan.elder@mfe.govt.nz>; Laura.Hardinx@xxx.xxxx.nz; xxxxx.xxxxxx@xxxx.xxxx.xx; Tracy.Parsons@mfat.govt.nz; Phxx.xxxxxx@xxxx.xxxx.xx; Sam.Verevis@mfat.govt.nz; kerryn.foxxxx@xxxx.xxxx.xx; mppadvice@mpp.govt.nz; tevaerangi.minster@mpp.govt.nz; Terina.xxxxx@xxx.xxxx.nz; Ana Koloto <ana.koloto@mpp.govt.nz>; deb.potter <deb.potter@women.govt.nz>; sheree.demalmanche@police.govt.nz; xxxxxxx.xxxxxx@xxxxxx.xxxx.xx; Daniel.Morrison@police.govt.nz; Adrianx.xxxxxxxx@xxxxxx.xxxx.xx;tanya.roth@police.govt.nz; hugo.vitalis@publicservice.govt.nz; meredith.obrien@publicservice.govt.nz; Michael Eglinton [TSY] <michael.eglinton@treasury.govt.nz>; Shaan.Badenhoxxx@xxxxxxx.xxxx.xx s 6(a) @ncsc.govt.nz; s 6(a) @ncsc.govt.nz; Matt Haigh <matt.haixx@xxx.xxxt.nz>; steffi.schuster@rbnz.govt.nz; ngapera.hoerara@justice.govt.nz; Andrew.Hampton@tearawhiti.govt.nz; Papexxxxxxxxx@xxxxxxxxxx.xxxx.xxxx.nz; arnu.turvey@tearawhiti.govt.nz; mark.bryant@crownlaw.govt.nz; Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>; nadia.ward@tpk.govt.nz; Darin Bishop <bishd@tpk.govt.nz>

**Cc:** Beverley Braybrook <xxxxxxxxxxxx@xxxxxx.xxxx.xx>; Jacqueline Derby <Jacqueline.Derby@pco.govt.nz>; Anne O'Driscoll <Anne.O'xxxxxxxx@xxx.xxxx.xx>

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#### Further information

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We undertook public consultation on proposals for new data and statistics legislation between 27 September and 9 November 2018. Our [summary of submissions](#) was released in April 2019.

In March 2020 Cabinet agreed to a suite of policy proposals and to the drafting of a new Data and Statistics Bill to replace the Act. Copies of the Cabinet Papers, Cabinet Minutes, and Regulatory Impact Analysis are [available on our website](#).

In April 2021 Cabinet agreed to a number of supplementary policy proposals to give effect to modernised offences and penalties and new compliance tools, remove inadvertent barriers in other legislation that prohibit or restrict the provision of data to Stats NZ, and address other issues that arose during Bill drafting. The paper should be available shortly [on our website](#).

Please let me know if you have any questions or concerns.

Ngā mihi nui

Dave

**Dave Fraser** (pronouns: he/him/his)

Senior Policy Advisor – Legislative Policy | Kaitohutohu Matua – Kaupapa Ture  
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## Romaine Solomona

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**From:** Ephraim Wilson  
**Sent:** Monday, August 2, 2021 3:29 PM  
**To:** Frances Aiken  
**Cc:** Peter Mee; Ewan Lincoln  
**Subject:** OPC CONSULTATION - Data and Statistics Bill  
**Attachments:** Draft Cabinet paper - Data and Statistics Bill.pdf; Draft Data and Statistics Bill [for consultation].pdf

Tēnā koe

Thank you for inviting our comment on the Cabinet Paper and updated draft Data and Statistics Bill (“**the Bill**”).

You will recall that we made some broad and specific comments on the previous version of the Bill. We were pleased to see that–

- our specific comment on the then cl 37(2)(b) (now cl 38(2)(b)) has been incorporated into the current Draft Bill; and
- our preference for “authorise” to be used consistently throughout the Bill has also been incorporated (as opposed to using “consent” and “agree(ment)”).

The remaining comments/recommendations we made do not appear to have been taken up. As such, I reiterate some them below for your consideration, along with new comments on the updated Bill–

### ***Relationship with the Privacy Act 2020***

You mention in your consultation email that you have been discussing with PCO how best to remove barriers in other legislation that inadvertently restrict or prevent the provision of information to Stats NZ. Your solution is to word cls 28, 29, and 31 such that agencies will be authorised to provide data for official statistics and research, unless other legislation expressly prevents provision of the data. You note that this approach means it is no longer necessary to amend some legislation.

- We want to understand whether “*other legislation*” includes the Privacy Act, and what your intention is here.
- Generally speaking, for the avoidance of doubt it would help to clearly state the relationship with the Privacy Act in the Bill.

### ***Delegation functions or powers of the Statistician***

Clause 16 provides a broad power for the Statistician to delegate functions or powers under the Data and Statistics Act or any other Act – a power that does not exist under the current Statistics Act. OPC would expect anyone exercising functions or powers under delegation from the Statistician to be required to meet the same high standards of independence and careful handling of data as the Statistician.

- Your confirmation that the pertinent obligations would flow through in a delegation makes us more comfortable with the proposal.

### ***Specific comments***

- We would like to understand a bit more around the meaning of “data”. Currently it states, “**data** includes information”. Is more to follow in this definition?
- Clause 40 provides that the Statistician may authorise the disclosure of a document or class of documents that the Statistician has (in consultation with the Chief Archivist) classified as a historical document or class of historical documents. OPC comments that:
  - It is unclear which documents this clause relates to (in contrast to the existing section 37D, which relates to ‘schedules’, a defined term in the Act).



- The clause provides no indication of the criteria for classifying documents as historical documents. (Note also that the current section 37D applies only to schedules that are at least 100 years old, but there is no such restriction in the Bill.)
- It seems likely that the documents to which clause 40 applies could include personal information. Accordingly, some limits are needed on the power of the Statistician to authorise their disclosure.



We would be happy to discuss our comments with you if that would be helpful.

Nāku noa, nā  
Ephraim Wilson

**Ephraim Wilson**  
Policy Adviser

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**From:** Frances Aiken <[xxxxxxx.xxxxx@xxxx.xxxx.xx](mailto:xxxxxxx.xxxxx@xxxx.xxxx.xx)>

**Sent:** Monday, 26 July 2021 4:11 pm

**To:** [Brian.Hesketh@acc.co.nz](mailto:Brian.Hesketh@acc.co.nz); [Abbey.Mennie@acc.co.nz](mailto:Abbey.Mennie@acc.co.nz); [Simon.Lawrence2@acc.co.nz](mailto:Simon.Lawrence2@acc.co.nz); [xxxxxx.xxxxxxxxxx@xxx.xx.xx](mailto:xxxxxx.xxxxxxxxxx@xxx.xx.xx); [Sebastian.Morgan-Lynch@acc.co.nz](mailto:Sebastian.Morgan-Lynch@acc.co.nz); Chris McDowall <[chris.mcdowall@xxx.xxxx.xx](mailto:chris.mcdowall@xxx.xxxx.xx)>; [AJ.Millward@mbie.govt.nz](mailto:AJ.Millward@mbie.govt.nz); Evelyn Wareham <[evelyn.wareham@mbie.govt.nz](mailto:evelyn.wareham@mbie.govt.nz)>; [xxxxxx.xxxxxx@xxxx.xxxx.xx](mailto:xxxxxx.xxxxxx@xxxx.xxxx.xx); Tony Waldegrave <[tony.waldegrave@mbie.govt.nz](mailto:tony.waldegrave@mbie.govt.nz)>; [Mark.Gordon@mbie.govt.nz](mailto:Mark.Gordon@mbie.govt.nz); Emma Mawby <[emma.mawby@mbie.govt.nz](mailto:emma.mawby@mbie.govt.nz)>; [David.Paterson@mbie.govt.nz](mailto:David.Paterson@mbie.govt.nz); [paul.merwood@mbie.govt.nz](mailto:paul.merwood@mbie.govt.nz); [Jonathan.Morxxx@xxxxxxx.xxxx.nz](mailto:Jonathan.Morxxx@xxxxxxx.xxxx.nz); [mathew.black@customs.govt.nz](mailto:mathew.black@customs.govt.nz); [Janine.Smith@customs.govt.nz](mailto:Janine.Smith@customs.govt.nz); [xxxxxx.xxxxxxxx@xxxxxxx.xxxx.xx](mailto:xxxxxx.xxxxxxxx@xxxxxxx.xxxx.xx); [nicole.xxxxxx@xxxxxxx.xxxx.xx](mailto:nicole.xxxxxx@xxxxxxx.xxxx.xx); [Nic.Blakeley0xx@xxx.xxxx.xx](mailto:Nic.Blakeley0xx@xxx.xxxx.xx); [xxxxxx.xxxxxxxx@xxx.xxxx.nz](mailto:xxxxxx.xxxxxxxx@xxx.xxxx.nz); [xxxxxx.xxxxxx@xxx.xxxx.xx](mailto:xxxxxx.xxxxxx@xxx.xxxx.xx); Peter Salter <[peter.salter00x@xxx.xxxx.xx](mailto:peter.salter00x@xxx.xxxx.xx)>; [xxxx.xxxxxxxxxx@xxx.xxxx.xx](mailto:xxxx.xxxxxxxxxx@xxx.xxxx.xx); [xxxxxxx.xxxxxx@xxx.xxxx.xx](mailto:xxxxxxx.xxxxxx@xxx.xxxx.xx); Rob Hodgson <[Rob.Hodgsxxxxx@xxx.xxxx.xx](mailto:Rob.Hodgsxxxxx@xxx.xxxx.xx)>; [shama.kukkadxxx@xxx.xxxx.xx](mailto:shama.kukkadxxx@xxx.xxxx.xx); [Vaughan.Dodd001@msd.govt.nz](mailto:Vaughan.Dodd001@msd.govt.nz); [odi@msd.govt.nz](mailto:odi@msd.govt.nz); [alistair.xxxxx@xxx.xxxx.xx](mailto:alistair.xxxxx@xxx.xxxx.xx); [iwestbrooke@doc.govt.nz](mailto:iwestbrooke@doc.govt.nz); Elaine Wright <[ewrightx@xxx.xxxx.nz](mailto:ewrightx@xxx.xxxx.nz)>; [hthgyesen@doc.govt.nz](mailto:hthgyesen@doc.govt.nz); [xxxxxxx@xxx.xxxx.nz](mailto:xxxxxxx@xxx.xxxx.nz); [Philip.Meredith@Corrections.govt.nz](mailto:Philip.Meredith@Corrections.govt.nz); [peter.johnston@corrections.govt.nz](mailto:peter.johnston@corrections.govt.nz); [Alastair.Turrell@corrections.govt.nz](mailto:Alastair.Turrell@corrections.govt.nz); Russell Cooke <[russell.xxxxx@xxx.xxxx.nz](mailto:russell.xxxxx@xxx.xxxx.nz)>; Joanne Koreman <[joanne.koreman@dia.govt.nz](mailto:joanne.koreman@dia.govt.nz)>; Antony Moss <[antony.mxxx@xxx.xxxx.nz](mailto:antony.mxxx@xxx.xxxx.nz)>; [xxx.xxxxx@xxx.xxxx.xx](mailto:xxx.xxxxx@xxx.xxxx.xx); [andrei.zubxxx@xxx.xxxx.xx](mailto:andrei.zubxxx@xxx.xxxx.xx); [jonathon.arrell@dia.govt.nz](mailto:jonathon.arrell@dia.govt.nz); [Julia.Taylor@dia.govt.nz](mailto:Julia.Taylor@dia.govt.nz); [xxxxxx.xxxxxx@xxx.xxxx.xx](mailto:xxxxxx.xxxxxx@xxx.xxxx.xx); [jason.raven@dpmc.govt.nz](mailto:jason.raven@dpmc.govt.nz); Jonno Ingerson <[jonno.ingersxx@xxx.xxxx.xx](mailto:jonno.ingersxx@xxx.xxxx.xx)>; Adam Brown <[adam.brown@hud.govt.nz](mailto:adam.brown@hud.govt.nz)>; [wtexxx@xxxx.xxxx.xx](mailto:wtexxx@xxxx.xxxx.xx); [xxxxxxx@xxxx.xxxx.xx](mailto:xxxxxxx@xxxx.xxxx.xx); Ruth Fischer-Smith <[rfischer-smith@linz.govt.nz](mailto:rfischer-smith@linz.govt.nz)>; [xxxxxx.xxxxxx@xxx.xxxx.xx](mailto:xxxxxx.xxxxxx@xxx.xxxx.xx); [Wido.vanLixx@xxx.xxxx.nz](mailto:Wido.vanLixx@xxx.xxxx.nz); [matthew.dilly@mpi.govt.nz](mailto:matthew.dilly@mpi.govt.nz); Neil Hurley <[neil.hurley@mfe.govt.nz](mailto:neil.hurley@mfe.govt.nz)>; Dan Elder <[dan.elder@mfe.govt.nz](mailto:dan.elder@mfe.govt.nz)>; [Laura.Hardinx@xxx.xxxx.nz](mailto:Laura.Hardinx@xxx.xxxx.nz); [cindy.obrien@education.govt.nz](mailto:cindy.obrien@education.govt.nz); [David.Sanders@education.govt.nz](mailto:David.Sanders@education.govt.nz); Shane Beverley <[shane.beverley@education.govt.nz](mailto:shane.beverley@education.govt.nz)>; [Cabinet.Committee@education.govt.nz](mailto:Cabinet.Committee@education.govt.nz); [Antony.Harvey@education.govt.nz](mailto:Antony.Harvey@education.govt.nz); Selena Smeaton <[selena.sxxxxx@xxxxxxxxx.xxxx.xx](mailto:selena.sxxxxx@xxxxxxxxx.xxxx.xx)>; [Alex.Brunnt@education.govt.nz](mailto:Alex.Brunnt@education.govt.nz); [xxxxxx.xxxxxx@xxxxxxxxx.xxxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxxx.xxxx.xx); [xxx.xxxxxx@xxxxxxxxx.xxxx.xx](mailto:xxx.xxxxxx@xxxxxxxxx.xxxx.xx); [james.messent@mfat.govt.nz](mailto:james.messent@mfat.govt.nz); [xxxxxx.xxxxxx@xxxx.xxxx.nz](mailto:xxxxxx.xxxxxx@xxxx.xxxx.nz); [Phil.xxxxxx@xxx.xxxx.xx](mailto:Phil.xxxxxx@xxx.xxxx.xx); [Sam.Verexxx@xxx.xxxx.xx](mailto:Sam.Verexxx@xxx.xxxx.xx); [xxxxxx.xxxxxx@xxxx.xxxx.xx](mailto:xxxxxx.xxxxxx@xxxx.xxxx.xx);

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**Cc:** Beverley Braybrook <[xxxxxx.xxxxxxx@xxxxxx.xxxx.xx](mailto:xxxxxx.xxxxxxx@xxxxxx.xxxx.xx)>; David Fraser <[Davix.xxxxxxx@xxxxxx.xxxx.xx](mailto:Davix.xxxxxxx@xxxxxx.xxxx.xx)>  
**Subject:** FOR CONSULTATION - Data and Statistics Bill

Kia ora koutou

### **Attached for your feedback is a draft Cabinet Paper and draft Data and Statistics Bill**

The Data and Statistics Bill (the Bill) will replace the Statistics Act 1975 with legislation that has the flexibility to respond to advances in digital and data technology and to changing data needs and sources. It will provide the authorising framework for Stats NZ to continue exercising its core functions of producing statistics, leading and coordinating the official statistics system, and integrating and providing safe access to data for research.

Thank you for the feedback or comments that you have provided throughout the development of the Bill, particularly those from the recent consultation we conducted in May. These insights have further informed the crafting of the Bill, which we now circulate with the Cabinet paper for final feedback prior to Ministerial consultation. **We welcome your comments on the attached documents by COP Monday 2 August.** This timeframe is necessarily tight, as we expect that the Bill and Cabinet paper will be presented to the Cabinet Legislation Committee on either 26 August 2021 or 2 September 2021.

Feel free to share the documents with others in your organisation that may be interested in providing feedback. Please note that PCO are continuing to work on the Bill, and we will share the final draft prior to Ministerial consultation when it is available.

### **We draw your attention to the more substantive changes to the draft Bill—**

- Clauses reflecting the Treaty of Waitangi (te Tiriti o Waitangi) and the Māori – Crown relationship (e.g. clauses 3, 14) have been modified slightly for clarity; we are working with PCO on draft provisions to reflect the intention that GS will provide opportunities for participation, including partnering, in relation to the multi-year data and statistical programme, census and standards.
- A new definition of “data” has been included, and references to “information” have been changed where appropriate.
- Part 3 – Collection of data and statistical confidentiality, has been substantially reordered and clarified, including:
  - clauses 22 and 27, around collecting data and the role of the Minister in approving certain requests, have been rewritten for clarity;
  - clause 29 is new and provides authority for agencies to provide data in response to a voluntary request;
  - clause 30 clarifies the circumstances where it’s not appropriate for conditions to be imposed in response to a request;
  - as signalled previously, we have been discussing with PCO how best to remove barriers in other legislation that inadvertently restrict or prevent the provision of information to Stats NZ; clauses 28, 29 and 31 make it clear that agencies can provide data for official statistics and research, unless other

legislation expressly prevents provision of the data. This approach means that it is no longer necessary to amend some legislation. An updated list of amendments is included in Schedule 2.

- Clause 45 – we have added a new requirement for the Statistician to publish information about uses of statistical embargoes.
- Subpart 2 of Part 5, which enables other agencies to use the research access framework, has been substantially rewritten for clarity.
- Where appropriate, we have made a number of “technical” amendments to particular provisions reflecting feedback from agencies and from within Stats NZ.

### Further information

In 2016, Cabinet agreed to Stats NZ undertaking a review of statistics and related data legislation [CAB-16-Min-0313].

We undertook public consultation on proposals for new data and statistics legislation between 27 September and 9 November 2018. Our [summary of submissions](#) was released in April 2019.

In March 2020 Cabinet agreed to a suite of policy proposals and to the drafting of a new Data and Statistics Bill to replace the Act. Copies of the Cabinet Papers, Cabinet Minutes, and Regulatory Impact Analysis are [available on our website](#).

In April 2021 Cabinet agreed to a number of supplementary policy proposals to give effect to modernised offences and penalties and new compliance tools, remove inadvertent barriers in other legislation that prohibit or restrict the provision of data to Stats NZ, and address other issues that arose during Bill drafting. The paper is available [on our website](#).

Please let us know if you have any questions or concerns.

Ngā mihi nui

**Frances Aiken** (pronouns: she/her/hers)

Senior Advisor – Legislative Policy | Kaohūtohu Matua – Kaupapa Ture  
Stats NZ | Tauranga Aotearoa | [stats.govt.nz](https://stats.govt.nz)

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## Romaine Solomona

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**From:** Ephraim Wilson  
**Sent:** Wednesday, August 18, 2021 5:35 PM  
**To:** Frances Aiken; Ewan Lincoln; Peter Mee  
**Subject:** RE: Updated Data and Statistics Bill and Cabinet paper

Kia ora again



Thanks for engaging OPC and sending through this information which is really informative. We've made all the comments we need to on the Bill at this point. We look forward to hearing from you soon as to this Bill's progress.

Ngaa mihi nui  
Ephraim

**Ephraim Wilson**  
Policy Adviser

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**From:** Frances Aiken <Frances.Aiken@stats.govt.nz>  
**Sent:** Tuesday, 17 August 2021 2:17 pm  
**To:** Ephraim Wilson <Ephrxxx.xxxxxx@xxxxxxx.xxx.nz>; Ewan Lincoln <Ewan.Lixxxxx@xxxxxxx.xxx.xx>; Peter Mee <Peter.Mee@privacy.org.nz>  
**Subject:** Updated Data and Statistics Bill and Cabinet paper

Kia ora

Thank you again for sending through your feedback on the draft Cabinet Paper and draft Data and Statistics Bill (the Bill).

The **attached** draft Cabinet Paper and draft Bill have been sent out for Ministerial consultation, which has been scheduled to run until 24 August 2021. The aim is for the Bill to be considered by LEG on 2 September 2021. Where appropriate, we are continuing to work with PCO and agencies to incorporate changes to the draft Bill, which are generally in the nature of minor and technical fixes.

Below are our responses to your comments / feedback:

***Why have we defined data as “including information”, and will we reassess the definition in the future?***

During the development of the Bill, we used the words “data” and “information” throughout the text for different purposes. However, in practice the line between what is data, and what is information, is very blurry. Statisticians are comfortable with the ambiguous concept that data and information are different things...except when they are not. Reflecting that ambiguity in legislation proved problematic!

As a solution, we looked to similar legislation in other jurisdictions to see how they approached this issue, and felt that the definition for data as described in the Australian Data Availability and Transparency Bill 2020 (ADATB) met our needs. ADATB defines data as “any information in a form capable of being communicated, analysed or processed (whether by an individual or by computer or other automated means)”.

After discussing this definition with PCO, they recommended that we adopt the definition in the current Bill. PCO felt that the longer ADATB definition did not enhance understanding, but defining data as simply *including information* will clarify the application of the Bill to other Acts that exclusively refer to information.

We do not intend to change this definition unless there are strong reasons to do so.

***Please confirm that, when the Government Statistician delegates functions and powers (as per cl 16), the person(s) with the delegation will be required to meet the same high standards of independence and careful handling of data as the Statistician***

We can confirm that anyone to whom functions are delegated must comply with all obligations under the Bill.

***Clause 40 provides that the Statistician may authorise the disclosure of a document or class of documents that the Statistician has (in consultation with the Chief Archivist) classified as a historical document or class of historical documents. OPC comments that:***

- ***It is unclear which documents this clause relates to (in contrast to the existing section 37D, which relates to ‘schedules’, a defined term in the Act).***
- ***The clause provides no indication of the criteria for classifying documents as historical documents. (Note also that the current section 37D applies only to schedules that are at least 100 years old, but there is no such restriction in the Bill.)***
- ***It seems likely that the documents to which clause 40 applies could include personal information. Accordingly, some limits are needed on the power of the Statistician to authorise their disclosure.***

We have worked closely with Archives New Zealand to determine the most suitable approach to the transfer of Census records into their possession for storage as restricted-access records, and how to allow for their re-classification as open-access records after an appropriate period of time. The Public Records Act provisions allow for the application of a discretion with regard to the access status at the time of transfer, and at several other points in time during storage, until records may be re-classified and become open-access records. This discretion renders the Public Records Act process unsuitable in the special case of Census records. Trust and confidence that Census records will remain protected and confidential for an appropriate period of time is seen as paramount to the successful completion of the Census survey. The current power in section 37D of the Statistics Act 1975 to classify documents as historical documents has never been used. Clause 40 now provides a suitable mechanism outside of the Public Records Act provisions to enable Census records to be re-classified as open access records.

We note that:

- The power to classify documents as historical documents can relate to any document and is not intended to be restricted to Census or any other type of record or document;
- There is no criteria by which a document may be classified as a historical document other than that the classification is made in consultation with the Chief Archivist and is not a power the Government Statistician holds alone;
- It was agreed that we should no longer specify the time period in legislation as this will not ensure it is future proof. A period of time that is appropriate given the highly sensitive nature of Census records will apply operationally; and
- Census records will contain personal information, and the limitation on the power of the Government Statistician to re-categorise these records as open-access is that the decision must be taken in consultation with the Chief Archivist. It is not a decision that the Government Statistician may make alone.

***You mention in your consultation email that you have been discussing with PCO how best to remove barriers in other legislation that inadvertently restrict or prevent the provision of information to Stats NZ. Your solution is to word cls 28, 29, and 31 such that agencies will be authorised to provide data for official statistics and research, unless other legislation expressly prevents provision of the data. You note that this approach means it is no longer necessary to amend some legislation.***

- ***We want to understand whether “other legislation” includes the Privacy Act, and what your intention is here.***
- ***Generally speaking, for the avoidance of doubt it would help to clearly state the relationship with the Privacy Act in the Bill***

We have checked with PCO and yes, legislation in those clauses does include the Privacy Act 2020, but we do not consider it is necessary to include a reference to the Privacy Act in these provisions. An agency required to give data to the Statistician would still be required to consider the Privacy Act; but providing that data is not expressly prevented by the IPPs as the principles do allow disclosure of personal information for statistical or research purposes.

The requirements and exceptions to statistical confidentiality in the Bill (clause 38) reflect those in the IPPs, but apply more broadly to data, not just personal information.

In general, the sorts of legislation that would expressly prevent the provision of, or provide a discretion whether to provide, data to the GS are the following sorts of regimes:

- The tax administration regime;
- National security regime;
- Information held by Justice on behalf of the Court/judicial information;
- Information protected by Parliamentary privilege.

Any data provided to Stats NZ for official statistics and research that is “personal information” is managed in accordance with the Privacy Act 2020 (as well as statistical confidentiality requirements and other provisions limiting disclosure for other purposes e.g., as evidence in proceedings in the Statistics Act 1975 and Bill).

Ngā mihi nui,

**Frances Aiken** (pronouns: she/her/hers )

Senior Advisor – Legislative Policy | Kaitohutohu Matua – Kaupapa Ture  
Stats NZ | Tauranga Aotearoa | [stats.govt.nz](https://stats.govt.nz)

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## Romaine Solomona

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**From:** Gareth Derby <Gareth.Derby@ombudsman.parliament.nz>  
**Sent:** Thursday, March 24, 2022 2:29 PM  
**To:** Beverley Braybrook; Sarah McGray  
**Cc:** Jacqueline Derby; Emmett Geoghegan  
**Subject:** RE: Amendments to Data and Statistics Bill  
**Attachments:** Chief Ombudsman's comments on draft amendments to the Data and Statistics Bill.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Good afternoon, Beverley

Thank you for your email. Please find **attached** correspondence from the Deputy Ombudsman, Bridget Hewson, on behalf of the Chief Ombudsman.

Very happy to answer any further questions, and my contact details are below.

Kind regards

**Gareth Derby**

Principal Advisor

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**From:** Beverley Braybrook <Beverley.Brxxxxxxx@xxxxx.xxxx.nz>

**Sent:** Monday, 21 March 2022 9:43 am

**To:** Sarah McGray <Sarah.McGray@oag.parliament.nz>; Gareth Derby <Gareth.Derby@ombudsman.parliament.nz>

**Cc:** Jacqueline Derby <Jacqueline.Derbx@xxx.xxxx.nz>; Emmett Geoghegan <emmett.geoghegan@stats.govt.nz>

**Subject:** Amendments to Data and Statistics Bill

Kia ora kōrua



As you will be aware, the Governance and Administration Committee is currently considering the Data and Statistics Bill. The Committee has agreed that Stats NZ and PCO may consult with you on draft provisions that address the concerns you raised about inclusion of Offices of Parliament in the definition of public sector agency.

PCO has drafted amendments to clause 7 (removing Offices of Parliament) and clause 29 (making it clear that any request for data to an Office of Parliament is to be treated as voluntary). Offices of Parliament will still be able to provide data to the Statistician at their discretion. Can you please provide any feedback you might have on these amendments by end Thursday 24 March 2022?

Many thanks  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
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Stats NZ | Tauranga Aotearoa | [stats.govt.nz](https://stats.govt.nz) | +64 4 931 4690

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Our ref 579539

24 March 2022

Ms Beverley Braybrook  
Principal Policy Advisor  
Statistics New Zealand

By email: [Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)

Dear Ms Braybrook

### Amendments to Data and Statistics Bill

I write to you on behalf of the Chief Ombudsman.

Thank you for your email dated 21 March 2022, containing certain draft amendments to the Data and Statistics Bill which are intended to remedy some of the concerns raised by the Chief Ombudsman in his submission.<sup>1</sup>

Several of these concerns were shared by the Controller and Auditor-General.<sup>2</sup>

#### Initial observations

Having reviewed the draft provisions, the Chief Ombudsman wishes to make the following observations:

- The Chief Ombudsman agrees with the proposed removal of clause 7(l), as this will ensure the 'Offices of Parliament' (as defined in section 2(1) of the Public Finance Act 1989) are removed from the definition of 'public sector agency,' and therefore will not be made subject to the Bill;
- The Chief Ombudsman appreciates that the addition of clause 29(3A) will deem any requests made to an Officer of Parliament by the Government Statistician to be voluntary in nature, which in turn will ensure that the Officers of Parliament are not be made subject to the powers of the executive government under the Bill.

Together, these appear to address the concerns raised by the Chief Ombudsman about the constitutional inappropriateness of certain aspects of the Bill, with two notable exceptions.

<sup>1</sup> Chief Ombudsman, *Submission on the Data and Statistics Bill*, 22 December 2021, available at: [https://www.parliament.nz/resource/en-NZ/53SCGA\\_EVI\\_116197\\_GA20878/c2986ccadf1207619ad5440918b74186be13da51](https://www.parliament.nz/resource/en-NZ/53SCGA_EVI_116197_GA20878/c2986ccadf1207619ad5440918b74186be13da51)

<sup>2</sup> Controller and Auditor-General, *Submission on the Data and Statistics Bill*, 2 February 2022, available at: [https://www.parliament.nz/resource/en-NZ/53SCGA\\_EVI\\_116197\\_GA20898/eb7b9e69c076b12b755b530dc8d78b2f40272d81](https://www.parliament.nz/resource/en-NZ/53SCGA_EVI_116197_GA20898/eb7b9e69c076b12b755b530dc8d78b2f40272d81)

### **Discretion of Minister to permit the use of data collected from Officers of Parliament**

It appears that if the Government Statistician was to collect data from an Officer of Parliament by agreement pursuant to clause 22(c)(i) (and without a request having been made under clauses 23 or 26), then either:

- the Minister may authorise the Government Statistician to use the data for the production of official statistics pursuant to clause 47(2)(a); or
- the Officer of Parliament may authorise its subsequent use by the Government Statistician for the production of official statistics pursuant to clause 47(2)(b).

This appears constitutionally inappropriate. The use by of data supplied voluntarily by an Officer of Parliament to the Government Statistician should be solely at the discretion of the Officer of Parliament who supplied it and not at the discretion of the executive government.

The Chief Ombudsman therefore suggests removing the Minister's discretion under clause 47(2)(a) to permit the Government Statistician's use of data in circumstances where the data in question were provided by an Officer of Parliament pursuant to clause 22(c)(i).

### **Inadvertent effects of Officers of Parliament not being a 'public sector agency'**

The Chief Ombudsman agrees in principle that the Officers of Parliament should be removed from the definition of 'public sector agency.'

Given the structure of the Bill, however, this seemingly will have the inadvertent effects of:

- Removing the Chief Ombudsman from the list of bodies to be consulted on the census of population and dwellings under clause 35;
- Possibly making the Officers of Parliament subject to the Government Statistician's powers of entry and inspection under clause 57 and warranted search under clause 58 (and, in turn, possibly making the Officers of Parliament subject to related offence provisions in clauses 76, 77 and/or 84).

It clearly would be a perverse outcome if an amendment to the Bill which is intended to confirm that the Officers of Parliament are not subject to the Bill inadvertently makes them subject to the invasive search and seizure provisions located therein.

The Chief Ombudsman therefore would suggest that the Bill, for the avoidance of doubt, states explicitly that:

- the Chief Ombudsman must be consulted on the census of population and dwellings on the same footing as 'public sector agencies' under clause 35. This will help preserve the Chief Ombudsman's ability to monitor and protect the rights and interests of disabled people under the United Nations Convention on the Rights of Persons with Disabilities, and Article 31 in particular (which relates to the collection of data from, and creation of statistics about, disabled people);<sup>3</sup>

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<sup>3</sup> United Nations Convention on the Rights of Persons with Disabilities, 6 December 2006, available at: [https://www.un.org/disabilities/documents/convention/convention\\_accessible\\_pdf.pdf](https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf)

- the Officers of Parliament are not subject to the Chief Statistician's powers of entry and inspection set out in clauses 57 and 58, possibly by amending the definition of 'business' explicitly to exclude 'Officers of Parliament' on the same footing as the exclusion applying to public sector agencies.

Thank you for the opportunity to provide further comments on the proposed amendments to the Bill.

Yours sincerely



Bridget Hewson  
Deputy Ombudsman

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## Romaine Solomona

---

**From:** Beverley Braybrook  
**Sent:** Monday, March 21, 2022 9:43 AM  
**To:** Sarah McGray; ~~X@X~~  
**Cc:** Jacqueline Derby; Emmett Geoghegan  
**Subject:** Amendments to Data and Statistics Bill  
**Attachments:** Data and Statistics Bill-selected clauses v31.2.pdf

Kia ora kōrua

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PCO has drafted amendments to clause 7 (removing Offices of Parliament) and clause 29 (making it clear that any request for data to an Office of Parliament is to be treated as voluntary). Offices of Parliament will still be able to provide data to the Statistician at their discretion. Can you please provide any feedback you might have on these amendments by end Thursday 24 March 2022?

Many thanks  
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**IN CONFIDENCE**

## **Data and Statistics Bill**

Government Bill

Proposed amendments for the consideration of the select committee

**Key:**

- **this is inserted text**
- **~~this is deleted text~~**

**Note:** This version of the Bill shows amendments to the Bill that have been prepared by the PCO for the purposes of select committee consideration. This version does—

- **NOT have official status in terms of unamended text**
- **NOT show whether amendments might in due course be voted as majority or unanimous amendments**
- **NOT have the status of an as-reported back version of the Bill.**

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*Hon Dr David Clark*

## **Data and Statistics Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Data and Statistics Act **2021**.

**2 Commencement**

This Act comes into force on **1 June 2022**.

**Part 1**  
**Preliminary provisions**

**6 Interpretation**

In this Act, unless the context otherwise requires,—

**authorised person**, in sections **sections 69 to 73**, has the meaning in **section 68**

**data** includes information

**infringement fee**, in relation to an infringement offence, means the infringement fee for the offence specified in the regulations

**infringement offence** means an offence identified in this Act as being an infringement offence

**Minister** means the Minister of Statistics

**official statistics** means statistics—

- (a) produced by the Statistician or a public sector agency; or
- (b) produced by an individual or organisation approved in writing by the Statistician to produce those statistics

**organisation** includes—

- (a) any body of persons (whether corporate or unincorporated), including whānau, hapū, or iwi, other than a public sector agency; and
- (b) for the purposes of **Part 5**, a government entity that has its head office or principal place of business outside New Zealand

**organisation**—

- (a) includes—



- (i) any body of persons (whether corporate or unincorporated), including whānau, hapū, or iwi, other than a public sector agency; and
  - (ii) for the purposes of **Part 5**, a government entity that has its head office or principal place of business outside New Zealand; but
- (b) does not include a court or tribunal in relation to its judicial functions

**overseas person** has the meaning set out in **section 52(3)**

**produce**, in relation to statistics, includes developing and designing statistics, and **production** has a corresponding meaning

**provide**, in relation to data requested under **Part 3**, means providing the data to the Statistician or public sector agency requesting the data or enabling the Statistician or public sector agency to access the data

**public sector agency** has the meaning in **section 7**

**regulations** means regulations made under this Act

**Statistician** means the Government Statistician referred to in **section 12**.

## 7 Meaning of public sector agency

In this Act, unless the context otherwise requires, **public sector agency** means—

- (a) a public service agency as defined in section 10(a) of the Public Service Act 2020:
- (b) the New Zealand Police:
- (c) the New Zealand Defence Force:
- (d) a statutory entity named in Schedule 1 of the Crown Entities Act 2004:
- (e) the Reserve Bank of New Zealand:
- (f) an organisation named or described in Schedule 4, or a company named in Schedule 4A, of the Public Finance Act 1989:
- (g) a board as defined in section 10(1) of the Education and Training Act 2020:
- (h) an institution as defined in section 10(1) of the Education and Training Act 2020:
- (i) a Crown entity company or Crown entity subsidiary as defined in section 10 of the Crown Entities Act 2004:
- (j) a State enterprise as defined in section 2 of the State-Owned Enterprises Act 1986:
- (k) a mixed ownership model company as defined in section 2(1) of the Public Finance Act 1989:
- (l) ~~an Office of Parliament as defined in section 2(1) of the Public Finance Act 1989:~~

- (m) the Office of the Clerk of the House of Representatives and the Parliamentary Service:
- (n) the Parliamentary Counsel Office:
- (o) a local authority as defined in section 5(1) of the Local Government Act 2002.

### Part 3

#### Collection of data and statistical confidentiality

##### Subpart 1—Collecting data

#### 22 Collecting data

Data may be collected by the Statistician under this Act—

- (a) by means of a request under **section 23**:
- (b) by means of a request on behalf of the Statistician by a public sector agency under **section 26**:
- (c) if the Statistician considers the data is necessary or desirable to enable the Statistician to produce official statistics, or desirable for research under **Part 5**,—
  - (i) by collection from any individual, public sector agency, or organisation by agreement with the Statistician, without a request having been made under **section 23 or 26**; or
  - (ii) by collection by the Statistician under any arrangement that the Statistician may think fit, including observation and publicly available sources.

##### Subpart 2—Requests for data

#### 23 **Statistician may request data from individual, public sector agency, or organisation to produce official statistics**

- (1) The Statistician may request data from an individual, public sector agency, or organisation if—
  - (a) the individual, public sector agency, or organisation is in a position to provide the data; and
  - (b) the Statistician considers the data is necessary or desirable to enable the Statistician to produce official statistics.
- (2) When making a request under this section, the Statistician may, if the Statistician considers it is appropriate to do so, specify that the provision of the data is voluntary in whole or in part.

*Obligation to comply with request***29 Obligation to comply with request**

- (1) An individual, public sector agency, or organisation to whom a request for data is made under **section 23 or 26** must provide the data by the date, and in the manner and form, specified in the request.
- (2) **Subsection (1)** does not apply—
  - (a) if legislation other than this Act expressly prevents the provision of the data; or
  - (b) to any data the provision of which is identified in the request or otherwise to be voluntary; or
  - (c) in the case of a request made to a public sector agency to any data the public sector agency refuses to provide under **subsection (3)**; or
- (3) A public sector agency may refuse to provide data if providing the data to the Statistician for the production of official statistics would be likely—
  - (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
  - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
    - (i) the Government of any other country or any agency of the Government of any other country; or
    - (ii) any international organisation; or
  - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.
- (3A) In the case of a request to an organisation that is an office of Parliament as defined in section 2(1) of the Public Finance Act 1989, the provision of all the data requested is to be treated as voluntary.
- (4) Except with the prior approval of the Statistician, responding to a request by referring to another document from which the data can be obtained does not constitute compliance with the request.

*Authority to provide data voluntarily in response to request***30 Authority to provide data voluntarily in response to request**

- (1) This section applies to the provision of data in response to a request under **section 23 or 26** if the provision of the data is specified to be voluntary.
- (2) The individual, public sector agency, or organisation to whom the request is made is authorised to provide data to the Statistician under this Act unless—
  - (a) legislation other than this Act expressly prevents the provision of the data; or

- (b) the provision of the information is contrary to any instrument, trust, or rule of law (other than in legislation), or an order of a court.

*Conditions not to be imposed in response to request*

**31 Conditions not to be imposed in response to request**

- (1) This section applies to the provision of data in response to a request under **section 23 or 26**.
- (2) No public sector agency, individual, or organisation may specify conditions on which data is provided by the public sector agency, individual, or organisation to the Statistician in response to the request.

Subpart 3—Collection by agreement with Statistician without request

**32 Authority to provide data by agreement with Statistician without request**

- (1) This section applies to the collection of data as described in **section 22(c)(i)**.
- (2) An individual, public sector agency, or organisation is authorised to provide data to the Statistician under this Act for the production of official statistics or research unless—
- (a) legislation other than this Act expressly prevents the provision of the data; or
- (b) the provision of the information is contrary to any instrument, trust, or rule of law (other than in legislation), or an order of a court.

**33 Circumstances where data may be collected as described in section 22(c)(i) subject to access conditions**

- (1) If data is collected from an individual or organisation as described in **section 22(c)(i)** for research, the individual or organisation may specify access conditions in relation to the use of the data for research.
- (2) The access conditions may—
- (a) provide for—
- (i) additional requirements that must be satisfied before the Statistician may authorise access to the data under **section 48**; or
- (ii) additional factors the Statistician must or may take into account before determining whether to authorise access to the data under **section 48**; or
- (b) permit the Statistician to authorise access to the data according to criteria that are less restrictive than those that would otherwise apply under **section 48**.
- (3) No individual or organisation may specify conditions on which data is provided by the individual or organisation to the Statistician as described in **section 22(c)(i)** for the production of official statistics.

- (4) No public sector agency may specify conditions on which data is provided by the public sector agency to the Statistician as described in **section 22(c)(i)** for the productions of official statistics or for research.

Released under the Official Information Act 1982

## Romaine Solomona

---

**From:** Gareth Derby <Gareth.Derby@ombudsman.parliament.nz>  
**Sent:** Thursday, March 24, 2022 3:15 PM  
**To:** Beverley Braybrook; Sarah McGray  
**Cc:** Jacqueline Derby; Emmett Geoghegan  
**Subject:** RE: Amendments to Data and Statistics Bill

No problem!

Gareth

---

**From:** Beverley Braybrook <Beverley.Brxxxxxxx@xxxxx.xxxx.nz>  
**Sent:** Thursday, 24 March 2022 3:14 pm  
**To:** Gareth Derby <Gareth.Derby@ombudsman.parliament.nz>; Sarah McGray <Sarah.McGray@oag.parliament.nz>  
**Cc:** Jacqueline Derby <Jacqueline.Derbx@xxx.xxxx.nz>; Emmett Geoghegan <emmett.geoghegan@stats.govt.nz>  
**Subject:** RE: Amendments to Data and Statistics Bill

Kia ora Gareth

Thanks for sending this through.

Ngā mihi  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
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**Cc:** Jacqueline Derby <[Jacqueline.Derbx@xxx.xxxx.nz](mailto:Jacqueline.Derbx@xxx.xxxx.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>  
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Good afternoon, Beverley

Thank you for your email. Please find **attached** correspondence from the Deputy Ombudsman, Bridget Hewson, on behalf of the Chief Ombudsman.

Very happy to answer any further questions, and my contact details are below.

Kind regards

**Gareth Derby**

Principal Advisor

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**Sent:** Monday, 21 March 2022 9:43 am

**To:** Sarah McGray <[xxxxx.xxxxxx@xxx.xxxxxxxx.xx](mailto:xxxxx.xxxxxx@xxx.xxxxxxxx.xx)>; Gareth Derby <[Gareth.Derby@ombudsman.parliament.nz](mailto:Gareth.Derby@ombudsman.parliament.nz)>

**Cc:** Jacqueline Derby <[Jacqueline.Derbx@xxx.xxxx.nz](mailto:Jacqueline.Derbx@xxx.xxxx.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>

**Subject:** Amendments to Data and Statistics Bill

Kia ora kōrua

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PCO has drafted amendments to clause 7 (removing Offices of Parliament) and clause 29 (making it clear that any request for data to an Office of Parliament is to be treated as voluntary). Offices of Parliament will still be able to provide data to the Statistician at their discretion. Can you please provide any feedback you might have on these amendments by end Thursday 24 March 2022?

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## Romaine Solomona

---

**From:** Beverley Braybrook  
**Sent:** Monday, March 28, 2022 3:55 PM  
**To:** Gareth Derby; Sarah McGray  
**Cc:** Jacqueline Derby; Emmett Geoghegan; Melanie Webb  
**Subject:** RE: Amendments to Data and Statistics Bill  
**Attachments:** Data and Statistics Bill-selected clauses v34.0.pdf

Kia ora kōrua

Attached are the draft provisions that address your feedback – refer amendments to clauses 36, 47, and 57. Clause 94A is included for completeness as it will also apply to Offices of Parliament.

Let me know if you have any queries.

Ngā mihi  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
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Kind regards

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**From:** Beverley Braybrook <[Beverley.Braxxxxxx@xxxxx.xxxx.nz](mailto:Beverley.Braxxxxxx@xxxxx.xxxx.nz)>

**Sent:** Monday, 21 March 2022 9:43 am

**To:** Sarah McGray <[xxxxx.xxxxxx@xxx.xxxxxxxxxx.xx](mailto:xxxxx.xxxxxx@xxx.xxxxxxxxxx.xx)>; Gareth Derby <[Gareth.Derby@ombudsman.parliament.nz](mailto:Gareth.Derby@ombudsman.parliament.nz)>

**Cc:** Jacqueline Derby <[Jacqueline.Derby@xxx.xxxx.nz](mailto:Jacqueline.Derby@xxx.xxxx.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>

**Subject:** Amendments to Data and Statistics Bill

Kia ora kōrua

As you will be aware, the Governance and Administration Committee is currently considering the Data and Statistics Bill. The Committee has agreed that Stats NZ and PCO may consult with you on draft provisions that address the concerns you raised about inclusion of Offices of Parliament in the definition of public sector agency.

PCO has drafted amendments to clause 7 (removing Offices of Parliament) and clause 29 (making it clear that any request for data to an Office of Parliament is to be treated as voluntary). Offices of Parliament will still be able to provide data to the Statistician at their discretion. Can you please provide any feedback you might have on these amendments by end Thursday 24 March 2022?

Many thanks  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
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**IN CONFIDENCE**

## **Data and Statistics Bill**

Government Bill

Proposed amendments for the consideration of the select committee

**Key:**

- **this is inserted text**
- **~~this is deleted text~~**

**Note:** This version of the Bill shows amendments to the Bill that have been prepared by the PCO for the purposes of select committee consideration. This version does—

- **NOT have official status in terms of unamended text**
- **NOT show whether amendments might in due course be voted as majority or unanimous amendments**
- **NOT have the status of an as-reported back version of the Bill.**

Released under the Official Information Act 1982

Released under the Official Information Act 1982

*Hon Dr David Clark*

## **Data and Statistics Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- Title**  
This Act is the Data and Statistics Act **2021**.
- Commencement**  
This Act comes into force on **1 June August 2022**.

**Part 1**  
**Preliminary provisions**

- Interpretation**  
In this Act, unless the context otherwise requires,—  
~~authorised person, in sections sections 69 to 73, has the meaning in section 68~~  
authorised person,—  
(a) in sections 61 to 67, has the meaning in section 60

(b) in sections 69 to 73, has the meaning in section 68

**data** includes information

**infringement fee**, in relation to an infringement offence, means the infringement fee for the offence specified in the regulations

**infringement offence** means an offence identified in this Act as being an infringement offence

**Minister** means the Minister of Statistics

**Office of Parliament** has the meaning in section 2(1) of the Public Finance Act 1989

**official statistics** means statistics—

- (a) produced by the Statistician or a public sector agency; or
- (b) produced by an individual or organisation approved in writing by the Statistician to produce those statistics

**organisation** includes—

- (a) ~~any body of persons (whether corporate or unincorporated), including whānau, hapū, or iwi, other than a public sector agency; and~~
- (b) ~~for the purposes of **Part 5**, a government entity that has its head office or principal place of business outside New Zealand~~

**organisation**—

- (a) includes—
  - (i) any body of persons (whether corporate or unincorporated), including whānau, hapū, or iwi, other than a public sector agency; and
  - (ii) for the purposes of **Part 5**, a government entity that has its head office or principal place of business outside New Zealand; but
- (b) does not include a court or tribunal in relation to its judicial functions

**overseas person** has the meaning set out in **section 52(3)**

**produce**, in relation to statistics, includes developing and designing statistics, and **production** has a corresponding meaning

**provide**, in relation to data requested under **Part 3**, means providing the data to the Statistician or public sector agency requesting the data or enabling the Statistician or public sector agency to access the data

**public sector agency** has the meaning in **section 7**

**regulations** means regulations made under this Act

**Statistician** means the Government Statistician referred to in **section 12**.

## 7 Meaning of public sector agency

In this Act, unless the context otherwise requires, **public sector agency** means—

- (a) a public service agency as defined in section 10(a) of the Public Service Act 2020:
- (b) the New Zealand Police:
- (c) the New Zealand Defence Force:
- (d) a statutory entity named in Schedule 1 of the Crown Entities Act 2004:
- (e) the Reserve Bank of New Zealand:
- (f) an organisation named or described in Schedule 4, or a company named in Schedule 4A, of the Public Finance Act 1989:
- (g) a board as defined in section 10(1) of the Education and Training Act 2020:
- (h) an institution as defined in section 10(1) of the Education and Training Act 2020:
- (i) a Crown entity company or Crown entity subsidiary as defined in section 10 of the Crown Entities Act 2004:
- (j) a State enterprise as defined in section 2 of the State-Owned Enterprises Act 1986:
- (k) a mixed ownership model company as defined in section 2(1) of the Public Finance Act 1989:
- (l) ~~an Office of Parliament as defined in section 2(1) of the Public Finance Act 1989:~~
- (m) the Office of the Clerk of the House of Representatives and the Parliamentary Service:
- (n) the Parliamentary Counsel Office:
- (o) a local authority as defined in section 5(1) of the Local Government Act 2002.

## Part 3

### Collection of data and statistical confidentiality

#### Subpart 1—Collecting data

## 22 Collecting data

Data may be collected by the Statistician under this Act—

- (a) by means of a request under **section 23**:
- (b) by means of a request on behalf of the Statistician by a public sector agency under **section 26**:



- (c) if the Statistician considers the data is necessary or desirable to enable the Statistician to produce official statistics, or desirable for research under **Part 5**,—
  - (i) by collection from any individual, public sector agency, or organisation by agreement with the Statistician, without a request having been made under **section 23 or 26**; or
  - (ii) by collection by the Statistician under any arrangement that the Statistician may think fit, including observation and publicly available sources.

### Subpart 2—Requests for data

#### **23 Statistician may request data from individual, public sector agency, or organisation to produce official statistics**

- (1) The Statistician may request data from an individual, public sector agency, or organisation if—
  - (a) the individual, public sector agency, or organisation is in a position to provide the data; and
  - (b) the Statistician considers the data is necessary or desirable to enable the Statistician to produce official statistics.
- (2) When making a request under this section, the Statistician may, if the Statistician considers it is appropriate to do so, specify that the provision of the data is voluntary in whole or in part.

#### *Obligation to comply with request*

#### **29 Obligation to comply with request**

- (1) An individual, public sector agency, or organisation to whom which a request for data is made under **section 23 or 26** must provide the data by the date, and in the manner and form, specified in the request.
- (2) **Subsection (1)** does not apply—
  - (a) if legislation other than this Act expressly prevents the provision of the data; or
  - (b) to any data the provision of which is identified in the request or otherwise to be voluntary; or
  - (c) in the case of a request made to a public sector agency, to any data the public sector agency refuses to provide under **subsection (3)**.
- (3) A public sector agency may refuse to provide data if providing the data to the Statistician for the production of official statistics would be likely—
  - (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or

- (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
    - (i) the Government of any other country or any agency of the Government of any other country; or
    - (ii) any international organisation; or
  - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.
- (3A) In the case of a request to an Office of Parliament, the provision of all the data requested is to be treated as voluntary.
- (4) Except with the prior approval of the Statistician, responding to a request by referring to another document from which the data can be obtained does not constitute compliance with the request.

*Authority to provide data voluntarily in response to request*

**30 Authority to provide data voluntarily in response to request**

- (1) This section applies to the provision of data in response to a request under **section 23 or 26** if the provision of the data is specified to be voluntary.
- (2) The individual, public sector agency, or organisation to whom the request is made is authorised to provide data to the Statistician under this Act unless—
  - (a) legislation other than this Act expressly prevents the provision of the data; or
  - (b) the provision of the information data is contrary to any instrument, trust, or rule of law (other than in legislation), or an order of a court.

*Conditions not to be imposed in response to request*

**31 Conditions not to be imposed in response to request**

- (1) This section applies to the provision of data in response to a request under **section 23 or 26**.
- (2) No individual, public sector agency, ~~individual~~, or organisation may specify conditions on which data is provided by the individual, public sector agency, ~~individual~~, or organisation to the Statistician in response to the request.

Subpart 3—Collection by agreement with Statistician without request

**32 Authority to provide data by agreement with Statistician without request**

- (1) This section applies to the collection of data as described in **section 22(c)(i)**.
- (2) An individual, public sector agency, or organisation is authorised to provide data to the Statistician under this Act for the production of official statistics or research unless—

- (a) legislation other than this Act expressly prevents the provision of the data; or
- (b) the provision of the ~~information~~ data is contrary to any instrument, trust, or rule of law (other than in legislation), or an order of a court.

**33 Circumstances where data may be collected as described in section 22(c)(i) subject to access conditions**

- (1) If data is collected from an individual or organisation as described in **section 22(c)(i)** for research, the individual or organisation may specify access conditions in relation to the use of the data for research.
- (2) The access conditions may—
  - (a) provide for—
    - (i) additional requirements that must be satisfied before the Statistician may authorise access to the data under **section 48**; or
    - (ii) additional factors the Statistician must or may take into account before determining whether to authorise access to the data under **section 48**; or
  - (b) permit the Statistician to authorise access to the data according to criteria that are less restrictive than those that would otherwise apply under **section 48**.
- (3) No individual or organisation may specify conditions on which data is provided by the individual or organisation to the Statistician as described in **section 22(c)(i)** for the production of official statistics.
- (4) No public sector agency may specify conditions on which data is provided by the public sector agency to the Statistician as described in **section 22(c)(i)** for the productions of official statistics or for research.

Subpart 4—Census of population and dwellings

**36 Consultation on census**

Before determining the manner of taking, and the data to be collected in, a census of population and dwellings, the Statistician must consult, in the manner that the Statistician thinks appropriate,—

- (a) public sector agencies and the Offices of Parliament that, in the opinion of the Statistician, have a particular interest in the census;
- (b) the public generally;
- (c) individuals and organisations that, in the opinion of the Statistician, have a particular interest in the census.

## Part 4 Official statistics

### *Use of data collected by agreement for research*

#### 47 Use of data provided by individual or organisation as described in **section 22(c)(i)**

- (1) This section applies if data is collected from an individual or organisation as described in **section 22(c)(i)** for research.
- (2) The data must not be used for the purposes of the production of official statistics unless—
  - (a) the Minister approves the use of the data for the production of official statistics; or
  - (b) the individual ~~from whom~~ or organisation ~~from which~~ which the data was collected authorises the use of the data for the production of official statistics.
- (1) Despite subsection (2), if the data is collected from an Office of Parliament, it must not be used for the purposes of the production of official statistics unless the Office of Parliament authorises the use of the data for the production of official statistics.

## Part 6 Offences and enforcement

### Subpart 1—Power of entry and inspection

#### 57 Power of entry and inspection

- (1) For the purpose of obtaining any data that the Statistician considers necessary or desirable to enable the Statistician to produce official statistics, the Statistician, or any employee of Statistics New Zealand authorised in writing for the purpose of this section by the Statistician (an **authorised employee**), may—
  - (a) enter any place of business (other than a private dwelling or marae), and may inspect any part of the premises, any goods that are being stored or offered for sale, and any relevant records; and
  - (b) require any person who by reason of that person's role relating to the business has custody of or access to any relevant records to produce for inspection, or facilitate the inspection of, the relevant records within any reasonable period that may be specified by the Statistician or authorised employee.
- (2) The Statistician or authorised employee may exercise the powers under **subsection (1)** only if—

- (a) the occupier of the place, or, as the case may be, the person referred to in **subsection (1)(b)**, consents; or
- (b) the Statistician or authorised employee obtains a warrant under **section 58**.
- (3) The provisions of subparts 1, 2, 4, 5, 7, and 10 of Part 4 of the Search and Surveillance Act 2012 (except for sections 118 and 119) apply to the exercise of the power of entry and inspection under this section.
- (4) In this section,—
- business** means any undertaking whether carried on for gain or reward or not, but does not include a public sector agency or an Office of Parliament
- relevant records**, in relation to a business, means accounts or records or other business information of the business.
- Compare: 1975 No 1 s 35(1), (2)

## Part 7

### General and miscellaneous provisions

#### Subpart 1—General provisions

#### **94A Authorisation by organisation**

An authorisation by an organisation for the purpose of this Act may be given by a person who the Statistician is satisfied is authorised to represent the organisation.

## Romaine Solomona

---

**From:** Gareth Derby <Gareth.Derby@ombudsman.parliament.nz>  
**Sent:** Tuesday, March 29, 2022 2:03 PM  
**To:** Beverley Braybrook; Sarah McGray  
**Cc:** Jacqueline Derby; Emmett Geoghegan; Melanie Webb; Stuart McGilvray  
**Subject:** RE: Amendments to Data and Statistics Bill

Good afternoon, Beverley

Thank you for again consulting the Chief Ombudsman, on his behalf Stuart and I are happy with the most recent set of amendments.

Kind regards

**Gareth Derby**

Principal Advisor

Office of the Ombudsman | Tari o te Kaitiaki Mana Tangata

DDI 04 460 9701 | Phone 04 473 9533 | Fax 04 471 2254

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**From:** Beverley Braybrook <Beverley.Brxxxxxxx@xxxxx.xxxx.nz>

**Sent:** Monday, 28 March 2022 3 55 pm

**To:** Gareth Derby <Gareth.Derby@ombudsman.parliament.nz>; Sarah McGray <Sarah.McGray@oag.parliament.nz>

**Cc:** Jacqueline Derby <Jacqueline.Derbx@xxx.xxxx.nz>; Emmett Geoghegan <emmett.geoghegan@stats.govt.nz>;

Melanie Webb <Melanie.Webb@oag.parliament.nz>

**Subject:** RE: Amendments to Data and Statistics Bill

Kia ora kōrua

Attached are the draft provisions that address your feedback – refer amendments to clauses 36, 47, and 57. Clause 94A is included for completeness as it will also apply to Offices of Parliament.

Let me know if you have any queries.

Ngā mihi

Beverley

**Beverley Braybrook** (pronouns: she/her/hers)

Principal Policy Advisor | Kaitohutohu Kaupapahere Mātāmua

Legislative Policy | Kaupapahere Ture

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**From:** Gareth Derby <[Gareth.Derby@ombudsman.parliament.nz](mailto:Gareth.Derby@ombudsman.parliament.nz)>

**Sent:** Thursday, 24 March 2022 2:29 pm

**To:** Beverley Braybrook <[xxxxxxx.xxxxxxxx@xxxxx.xxx.xx](mailto:xxxxxxx.xxxxxxxx@xxxxx.xxx.xx)>; Sarah McGray <[Sarah.McGray@oag.parliament.nz](mailto:Sarah.McGray@oag.parliament.nz)>

**Cc:** Jacqueline Derby <[Jacqueline.Derby@xxx.xxx.nz](mailto:Jacqueline.Derby@xxx.xxx.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>

**Subject:** RE: Amendments to Data and Statistics Bill

Good afternoon, Beverley

Thank you for your email. Please find **attached** correspondence from the Deputy Ombudsman, Bridget Hewson, on behalf of the Chief Ombudsman.

Very happy to answer any further questions, and my contact details are below.

Kind regards

**Gareth Derby**

Principal Advisor

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DDI 04 460 9701 | Phone 04 473 9533 | Fax 04 471 2254

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**Sent:** Monday, 21 March 2022 9:43 am

**To:** Sarah McGray <[xxxxx.xxxxxx@xxx.xxxxxxxx.xx](mailto:xxxxx.xxxxxx@xxx.xxxxxxxx.xx)>; Gareth Derby <[Gareth.Derby@ombudsman.parliament.nz](mailto:Gareth.Derby@ombudsman.parliament.nz)>

**Cc:** Jacqueline Derby <[Jacqueline.Derby@xxx.xxx.nz](mailto:Jacqueline.Derby@xxx.xxx.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>

**Subject:** Amendments to Data and Statistics Bill

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Many thanks  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
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