

## Ephraim Wilson

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**From:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>  
**Sent:** Thursday, 9 August 2018 6:17 pm  
**To:** Vanessa Blackwood  
**Cc:** Victoria Hinson; Camille Mosely; Megan Anderson  
**Subject:** RE: New Data and Statistics Legislation Draft Discussion Document and Cabinet Paper

Kia ora Vanessa

Thank you for your helpful feedback on the draft Cabinet paper for new data and statistics legislation.

Several agencies commented on the scope of new data and statistics legislation (eg, what data is covered and whether proposals apply to just Stats NZ or all government agencies). We have amended both documents to increase clarity. New legislation should provide a clear, coherent and consistent approach to the collection of data for the modern production of official statistics, and the safe management, use and re-use of data for research and analysis, with the appropriate privacy, confidentiality, security and transparency settings.

We received feedback from several agencies which will be very helpful for our further work developing the detailed policy proposals. We appreciate that there is significant complexity that we need to work through and look forward to your continued support as the work progresses.

We have intentionally designed the discussion document to be high level and accessible to facilitate discussion and get the public input we need to inform the detailed policy work. After we sent the document out to agencies for feedback, we had it checked to ensure the content was clearer and more accessible to a range of people. We have added some definitions, amended others, and used plain English as much as possible when describing technical terms.

In addition to the above changes, we have amended the Cabinet paper and discussion document to accurately reflect the Privacy Act principles and exemptions that permit a risk management approach to identification.

### Next steps

We will be providing an amended draft of the discussion document and Cabinet paper to our Minister this week for Ministerial consultation, with a view to it being considered at the Cabinet Government Administration and Expenditure Review Committee on 18 September 2018.

We look forward to working closely with you as we develop more detailed policy options, to ensure the options are fit for purpose and reflect system-wide data issues.

Thank you again for your feedback.

Heoi anō  
Beverley

### **Beverley Braybrook**

Principal Policy Advisor

Legislative Review Team

Stats NZ Tatauranga Aotearoa

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**From:** Megan Anderson

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

**To:** Vanessa Blackwood <Vanessa.Blackwood@privacy.org.nz>

**Cc:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>; Victoria Hinson <Victoria.Hinson@stats.govt.nz>; Camille Mosely <camille.mosely@stats.govt.nz>

**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>

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

**To:** Megan Anderson <Megan.Anderson@stats.govt.nz>

**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 Milichich; Beverley Braybrook; Victoria Hinson; Camille Mosely  
**Subject:** New Data and Statistics 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  
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**Unleashing**  
the power of data to change lives

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**From:** Beverley Braybrook  
**Sent:** Thursday, 12 July 2018 5:57 PM  
**To:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>  
**Cc:** Megan Anderson <[Megan.Anderson@stats.govt.nz](mailto:Megan.Anderson@stats.govt.nz)>; Victoria Hinson <[Victoria.Hinson@stats.govt.nz](mailto:Victoria.Hinson@stats.govt.nz)>; 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 allow 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

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**Towards new data and  
statistics legislation:  
public consultation**

## Data and statistics

Data and statistics help New Zealanders understand their world, make informed decisions, and engage with government. Within government, data and statistics inform policy development, investment decisions, service delivery and the setting of government targets.

Data and statistics are needed to support critical decisions taken by government, businesses, iwi, communities, households, and individuals and are significant contributors to improving the well-being of New Zealanders and lifting productivity. They help all of us make better, more-informed decisions.



**Official statistics** are a cornerstone of good government and support public confidence in government by providing insights into the performance of government and supporting an open democracy allowing New Zealanders to assess the impact of public policies and actions, and to engage with and participate in government.

**Research and analysis** aims to generate new knowledge about: economic, social and environmental issues; groups of individuals, households or organisations; the relationship between different factors and how they change over time. Research and analysis is undertaken and used by government, and by people, communities and organisations outside of government.



## Statistics Act 1975

Public Act 1975 No 1  
Date of assent 24 April 1975  
Commencement 24 April 1975

For more than 40 years, the **Statistics Act 1975** has governed the operation of New Zealand's official statistics system.

The Act has helped ensure that high quality statistics are produced across government, independently of political and external interference, so that New Zealanders can have trust and confidence in the statistics and use them to inform decisions.

The Act has also enabled New Zealand to lead the world in using integrated data to support decision making through research and analysis. Data has been kept safe.

**The Statistics Act is out of date.** And understandably so. It was designed in the 1970s when statistics were produced in hard copy and regular use of computers was just beginning.

The data environment, information needs and the opportunities to use data and statistics have changed significantly. And will keep changing.

The Act does not have the flexibility needed to respond to these or futures changes. This limits the value New Zealand could gain from transparent, trusted and greater use of government-held data.

## The Statistics Act 1975...

**...complicates and restricts the ability to acquire, integrate and share data in a modern data environment.**

**Example:** Under the Statistics Act, Stats NZ can publish an index or list of names and addresses of businesses, the number of persons engaged by the business, and the industry classification. But it cannot share institutional sector codes simply because the use of these codes wasn't imagined when the Act was created. Similarly for other useful and non-sensitive information

Being able to share institutional sector codes with the Reserve Bank, and in turn with retail banks, would mean more efficient creation of banking industry data, with greater accuracy and consistency, and reduced ongoing burden/cost for data suppliers & government.

**Example:** Stats NZ's Statistical Location Register (SLR) is a combination of addresses of buildings/dwellings and their geographic points, based on data sourced from Land Information New Zealand, NZ Post, the Census, the Stats NZ Business Register and building consents. It does not include any names or other details of people living at any address.

The SLR could be used to link social, economic and environmental data and help improve agency data quality and inform policies contributing to New Zealand achieving its sustainable development goals. But, even if the SLR was only to be used for government agencies to produce official statistics, the Statistics Act prohibits Stats NZ from sharing it with other producers.

**...does not provide sufficient foundation to ensure a coherent and co-ordinated approach to the production of statistics.**

**Example:** The Government Statistician has a duty under the Statistics Act to promote observance with statistical best practice. But there are no supporting mechanisms for this and no reciprocal requirements for producers of official statistics. This gap is only partially filled by the Cabinet Office guidance which recognises agencies should consult with Stats NZ on proposals that have implications for the collection, analysis and release of statistical information from administrative databases. And by Cabinet direction that producers of official statistics should comply with the guidance in the principles and protocols for official statistics published by the Government Statistician.

## The Statistics Act 1975...

**...does not provide sufficient tools for Stats NZ to influence the quality of data that informs the production of official statistics.**

**Example:** Official statistics are produced from a combination of survey and administrative data sources. Many of those administrative data sources are from government agency collections primarily used for operational service delivery. The Statistics Act, however, is silent on administrative data sources. Improving the quality of data at source, can lead to operational gains for agencies, increase opportunities for evidence-based decision making, as well as improving the production of official statistics. It can also mean that data and data insights can be better accessed by those the people and organisations that provided the data.

**Example:** While the Statistics Act is clear that data can be required from any person to inform the production of official statistics it is not clear whether this applies when other enactments limit the collection of data by agencies to functions under those Acts. This can mean that data about disability, ethnicity, Maori descent/iwi, gender identity and sexual orientation for example, may not be collected despite the importance for official statistics and evidence based decision making.

**...is not appropriately transparent about the use of data for research and analysis.**

**Example:** The Statistics Act has a jumble of provisions which enable the world leading integrated data infrastructure (ID) and its companion the longitudinal business database (LBD) through which de-identified data can be safely linked and securely accessed by researchers and analysts. There are no provisions in the Act that set out requirements for linking and integrating data.

**Example:** There is also very limited guidance about who can access data under the Act, beyond requirements for bona fide research in the public interest and a requirement for necessary research experience, knowledge, and skills. There are no requirements for transparency about the data being shared for research and analysis or about who is accessing the data and for what purpose(s), and no requirements to publish findings or methodology. While much of this is done as a matter of best practice, supporting legislation would provide certainty and allow people and organisations to better see how data is being shared and used.



## New data and statistics legislation is needed

- to reflect a modern and future-focused data environment
- have the right safeguards and protections to ensure New Zealand's data is used safely and appropriately.
- shape how Stats NZ, NZ's data agency, works in the future by keeping pace with new technology, increasing capabilities of data users, and creating new data sources.
- recognise the Treaty relationship between the Crown and Māori, and their interests in using data for decision-making and advancing economic, social and cultural wellbeing.
- recognise government-held data as a strategic asset and help increase the economic, social, and environmental benefits from data.
- provide a safe and transparent legislative framework for the production of official statistics and for the use of data for research and analysis.
- be flexible to keep pace with change, able to respond to the current data environment and a future that can't be fully envisaged.



**Ahead of the game: modern and future focused**



**Data recognised as a strategic asset**



**Treaty relationship reflected**



**Safeguards and protections in place**



## A suite of core information and data legislation

Like the Statistics Act does now, new data and statistics legislation will **sit alongside other legislation** that helps protect data, information, access and privacy. In addition, agency specific legislation will continue to include requirements for sharing, use and protection of data for specific purposes. For example, the Tax Administration Act which provides for the powers and responsibilities of the Commissioner of Inland Revenue to collect, share and protect data.

### Official Information

#### Official Information Act 1982

allows New Zealanders access to information that enables them to participate in government, and to hold government and government agencies to account.

### Public Records

#### Public Records Act 2005

ensures reliable recordkeeping as a way of ensuring accountability, integrity of Government records, and protection of New Zealand's Government's memory.

### Privacy

#### Privacy Act 1993/ Privacy Bill 2018

manages how people and organisations collect, use, disclose, store and give access to personal information (information about identifiable, living people).

### Data & statistics

#### New data & statistics legislation

enables the modern production of official statistics, and the safe management, sharing use and re-use of data for research and analysis.

## Public discussion

A public discussion is needed to encourage the public to identify and comment on what is important to them. Public comment is expected from those who want greater accessibility and usability of government-held data, and those who want to ensure that there are appropriate protections and safeguards for data collected for statistical or other purposes when used for research and analysis.

I will seek Cabinet approval to release a discussion document, which will be hosted online and the public invited to respond. Importantly, the public voice will help inform the development of detailed policy proposals.

A draft of the discussion document and Cabinet paper have been shared with your agencies and feedback received and incorporated. The focus for the discussion document is on the challenges and opportunities relating to:

- 1 Modernising the law governing the production of official statistics, including the ability to influence the quality of data that will inform those statistics.
- 2 Enabling and maximising safe use and sharing of quality government data for research and analysis for better strategic decision-making by government, businesses and other non-government organisations.
- 3 Ensuring the right protections for safe and trusted collection, management and use of that data.



## Public discussion

Questions in the discussion document are framed around four key topics areas.

### New data & statistics legislation

- purpose and scope
- outcomes for data and statistics legislation
- Treaty relationship with Māori

### Making better use of data

- open data
- sharing data for research & analysis
- access to government-held data for research & analysis

### Collecting the data New Zealand needs

- official statistics
- the official statistics system
- professional independence
- New Zealand's most important statistics
- survey & administrative data
- Census

### Safeguards and protections

- right safeguards and protections
- de-identification & confidentialisation
- approving users & secure access
- transparency
- offences and penalties



## Indicative Timeline

There may also be an opportunity for an exposure draft bill prior to the introduction version, however, this may depend on the detailed policy proposals, the natures of changes in policy settings, and/or the complexity of the draft Bill.



## Ephraim Wilson

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**From:** John Edwards  
**Sent:** Friday, 9 November 2018 1:55 pm  
**To:** Vanessa Blackwood  
**Cc:** Michael Harrison  
**Subject:** RE: Stats NZ Public discussion document for new data and statistics legislation - for your review

Thanks Vanessa – I'm happy for the submission to go in that form.

JE

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**From:** Vanessa Blackwood  
**Sent:** Wednesday, 7 November 2018 4:08 PM  
**To:** John Edwards <John.Edwards@privacy.org.nz>  
**Cc:** Michael Harrison <Michael.Harrison@privacy.org.nz>  
**Subject:** Stats NZ Public discussion document for new data and statistics legislation - for your review

Kia ora John,

Attached is our submission on the public discussion document disseminated by Stats NZ on their proposed new data and statistics legislation. (See <https://www.stats1975.nz/> for their consultation, including some very 1970s design work, and the [discussion document](#))

If you could please review and provide feedback or sign off – submissions are due 09 November (this Friday).

Cheers,  
V



## Ephraim Wilson

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**From:** Vanessa Blackwood  
**Sent:** Friday, 9 November 2018 3:36 pm  
**To:** 'stats1975@stats.govt.nz'  
**Cc:** Michael Harrison  
**Subject:** Statistics Legislative Review  
**Attachments:** 2018-11-09 Privacy Commissioner submission on public discussion document.pdf

Tena koe,

Please find attached the Privacy Commissioner's submission on the *Towards new data and statistics legislation: Public discussion document*.

If you have any questions about the submission, please do not hesitate to contact me.

Nga mihi,  
Vanessa

**Vanessa Blackwood** | Policy Adviser | Kaitohutohu, Policy and Operations

Office of the Privacy Commissioner Te Mana Mātāpono Matatapu

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## Privacy Commissioner's Submission on the Statistics New Zealand *Towards new data and statistics legislation: Public discussion document*

### Executive Summary

1. One of my functions under the Privacy Act 1993 is to examine any matters affecting individuals' privacy. The Privacy Act is New Zealand's main privacy law. It governs the collection, use, storage and disclosure of personal information and provides a mandate for my Office to consider wider developments or actions that affect personal privacy.
2. Stats NZ has released *Towards new data and statistics legislation* as a public discussion document which sets out the challenges and opportunities the new legislation must meet. Stats NZ is New Zealand's official data agency and much of what it does is governed by the Statistics Act 1975. This legislation is now significantly out of date and no longer fit for purpose. Mass computer access, the internet and social media, and other technological advances all have major implications for data gathering, use, and privacy.
3. In general, I support the proposals set out in this discussion document. These proposals are framed at a high conceptual level and will require more policy consideration to finesse and fine-tune before they are introduced in a draft Bill. I look forward to continued consultation and engagement with Stats NZ officials as this work progresses.
4. I note that several proposals in the discussion document have particular relevance for privacy and the protection of personal information. The document discusses de-identification and confidentialisation, open data, and cross-border data transfers. These issues will need careful consideration to ensure that individual privacy is not unduly affected.
5. I support the goals of modernising the data and statistics legislation. New data and statistics legislation must ensure that personal and sensitive data is used safely and responsibly. I appreciate that Stats NZ is aiming to reach the right balance between increasing availability and use of data, and ensuring this data is shared and used in an appropriate, respectful and safe way for New Zealanders.



## Background

6. The Statistics Act governs the operation of New Zealand's Official Statistics System. It aims to ensure that high-quality statistics are produced across government, independent of political and other undue interference. The Statistics Act was produced in an era when computer use was significantly less ubiquitous, and statistics were produced in hard copy.
7. The data environment and information collected have changed significantly. New Zealand's population has increased from 3 million to around 4.8 million. New technologies will continue to emerge and the capability of data processing and usage will increase exponentially.
8. The discussion document says that the Statistics Act does not have the flexibility needed to respond to these changes, keep data safe and protect personal and confidential information. It also says the Statistics Act is not aligned with other legislation such as the Official Information Act 1982, the Privacy Act, and the Public Records Act 2005. These Acts take a more modern approach and include protections without unreasonably restricting data access and use.
9. Stats NZ proposes that new data and statistics legislation needs to "reflect a modern and future-focused data environment" which will keep pace with technology, increase capabilities of data users, and create new data sources. Stats NZ also states that new legislation must recognise the Treaty relationship between Māori and the Crown, including Māori data sovereignty.

## Open data requires strong de-identification and confidentialisation standards

10. The discussion document includes the proposal that new legislation should support the proactive release of data, whenever possible, to maximise value and access to that data.
11. Datasets provide a trove of information and insights that inform new and improved products, processes, and applications. The potential for doing so without compromising privacy is achieved by anonymising datasets of personal information about individuals before they are interrogated for research purposes.
12. As I noted in my submission to the Justice Select Committee on the Privacy Bill, I support the continued application of exceptions to the use and disclosure principles of the Privacy Act. Those exceptions allow for the publication and use of personal information in a form in which the information is anonymised. These provisions serve an important public interest in allowing the statistical use of personal information for research purposes. They provide one of the statutory underpinnings of the open government data programme that allows government-held data to be made increasingly available for public benefit, including private sector initiatives that utilise anonymised data to create new services.

13. Datasets containing personal information must be carefully and robustly de-identified before being released to protect the privacy of the individuals concerned. Personal information can be de-identified by applying various tools and techniques.
14. Recent situations have demonstrated the risk of harm to individuals if their identities are unmasked when de-identification techniques have not been sufficiently robust. My 2016 report to the Minister of Justice on the operation of the Privacy Act noted that there have been several high-profile instances overseas where individuals in anonymised datasets have been re-identified, leading to a range of privacy harms and the derailing of public and private sector initiatives.<sup>1</sup>
15. Re-identification is the process by which anonymised personal information is linked back to the individuals the information relates to, removing the individuals' privacy in that information. Re-identification can be a deliberate act such as interrogating datasets for weak anonymisation to reveal individual identities, or it can be inadvertent, such as data research that uncovers vulnerabilities in de-identification techniques. It can also arise from combining different datasets to discover correlations between them.
16. A recent Australian example of re-identification is the Medicare Benefits Scheme data that was released for public access and analysis. The de-identified data contained information about services, the location of service provision and the encrypted healthcare provider and recipient numbers for each funded service. University of Melbourne researchers tested the robustness of the anonymisation and were able to re-identify service provider identifiers using publicly available information. When the vulnerability was reported, the dataset was taken down, and an Australian Information Commissioner investigation found that the Department of Health had unintentionally breached the Australian privacy principles in preparing the dataset for publication.
17. Stats NZ states in the discussion document that "protecting privacy is an integral part of the open data approach – 'open data can only be unlocked when citizens are confident that open data will not compromise their right to privacy'." The discussion document also raises that "de-identification and confidentiality settings in new data and statistics legislation should reflect the sensitivity of the data, and the likelihood and impact of re-identification. Settings for specific types of data should be informed by a robust risk-management approach."
18. These statements provide some confidence that Stats NZ is conscious of these sensitive privacy issues and will seek to develop open data standards in a respectful and protective manner. Stats NZ must, in its capacity as the agency responsible for the Open Government Data Programme and through its data stewardship role, continue to be mindful of the privacy risks of inadequate de-identification of personal information.
19. I am happy to work with Stats NZ to provide guidance and support on the appropriate privacy settings for de-identification, anonymisation and confidentialisation standards.

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<sup>1</sup> <https://privacy.org.nz/news-and-publications/reports-to-parliament-and-government/privacy-commissioners-report-to-the-minister-of-justice-under-section-26-of-the-privacy-act/>

### **Data shared for research and analysis**

20. The discussion document proposes that new data and statistics legislation should clarify that data can be safely shared across government so that it can be used for research and analysis with appropriate safeguards and protections. Linked datasets can provide richer insights and support better decision-making. This cross-government sharing is already enabled by the existing Statistics Act but there is no clear statement to this effect, and it is not always clear which protections should apply, and when.
21. The document proposes that permission for sharing or using identifiable information for the purposes of making decisions about individuals should continue to be provided by the agency's own legislation or overarching legislation such as the Privacy Act. It also recommends that data shared in line with the Statistics Act research and analysis provisions should not be able to be used to make decisions about an individual without the consent of that individual.
22. I support this proposal to clarify when and how data can be shared across government, and that new legislation should also clarify the protections and safeguards that apply. These safeguards will be particularly important when organisations outside government want to combine their data with government-held data for research and analysis.
23. The existing exceptions to the disclosure principle contained in the Privacy Act will still operate alongside this proposal, where personal information is being shared about an identifiable individual. I am comfortable that this proposal will add clarity to the cross-government sharing of information for research and analysis purposes.
24. I note that Stats NZ, in its role as Government Chief Data Steward, has worked with me to develop guidance and principles to support the safe and effective use of data and analytics. I am happy to continue my work with Stats NZ to ensure that privacy is appropriately safeguarded when government-held data is shared, linked, or integrated for research and analysis.

### **Cross-border data and access to Stats NZ data by international researchers**

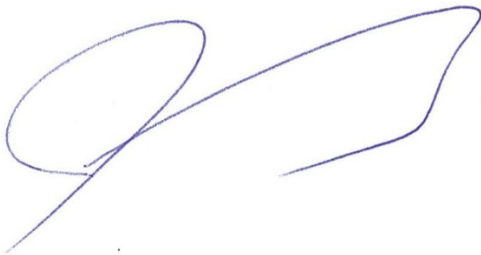
25. The discussion document proposes that new data and statistics legislation should enable the provision of data to reputable international organisations (e.g. national statistical offices) for ongoing use, provided certain protections and conditions are met. The document explains that the current disclosure settings in the Statistics Act prevent New Zealand's involvement in international research programmes. These programmes require de-identified, but not confidentialised, data to be held by and managed by trusted international organisations.
26. As I raised in my submission on the Privacy Bill, there should be certainty about the extraterritorial application of the Privacy Act regarding overseas agencies which collect, hold, use or disclose personal information about New Zealand individuals. New Zealanders should be able to expect suitable standards, regulation and enforcement when their personal information is being held or used by an overseas

organisation. The Ministry of Justice will be able to provide Stats NZ with further advice in this area.

27. The Privacy Bill contains a new restriction on disclosing information overseas. Information Privacy Principle 11(3) restricts the use of the research exemption regarding disclosure overseas unless the recipient of the information is in a prescribed country or can provide comparable safeguards to those contained in the Bill. While these provisions may change as the Privacy Bill progresses through Parliament, I support the intent that personal information sent out of New Zealand must remain subject to comparable privacy safeguards.

### **Conclusion**

28. In general, I support the proposals set out in this discussion document. I note that these proposals are framed at a high conceptual level and will require more policy consideration to finesse and fine-tune before they are introduced in a draft Bill. I look forward to continued consultation and engagement with Stats NZ officials as this work progresses.
29. I am happy to work with Stats NZ to provide guidance and support on appropriate privacy settings as these policy proposals are further developed.



John Edwards  
**Privacy Commissioner**

## Ephraim Wilson

---

**From:** Stats1975 <Stats1975@stats.govt.nz>  
**Sent:** Friday, 9 November 2018 3:40 pm  
**To:** Vanessa Blackwood  
**Subject:** RE: Statistics Legislative Review

Kia ora

Thank you for taking the time to make a submission on *Towards new data and statistics legislation: Public discussion document*. Your views will help us develop policy options for new data and statistics legislation that we will provide to the Minister of Statistics.

Ngā mihi nui

### Legislative Review Team

Stats NZ Tatauranga Aotearoa  
[stats.govt.nz](http://stats.govt.nz)

# Unleashing

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---

**From:** Vanessa Blackwood <Vanessa.Blackwood@privacy.org.nz>  
**Sent:** Friday, 9 November 2018 3:36 PM  
**To:** Stats1975 <Stats1975@stats.govt.nz>  
**Cc:** Michael Harrison <Michael.Harrison@privacy.org.nz>  
**Subject:** Statistics Legislative Review

Tena koe,

Please find attached the Privacy Commissioner's submission on the *Towards new data and statistics legislation: Public discussion document*.

If you have any questions about the submission, please do not hesitate to contact me.

Nga mihi,  
Vanessa

### Vanessa Blackwood | Policy Adviser | Kaitohutohu, Policy and Operations

Office of the Privacy Commissioner Te Mana Mātāpono Matatapu



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E: For new work, [policy@privacy.org.nz](mailto:policy@privacy.org.nz). For ongoing work, [vanessa.blackwood@privacy.org.nz](mailto:vanessa.blackwood@privacy.org.nz)



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## Ephraim Wilson

---

**From:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>  
**Sent:** Tuesday, 14 January 2020 10:25 am  
**To:** Brian.Hesketh@acc.govt.nz; Chris.McDowall@mbie.govt.nz;  
AJ.Millward@mbie.govt.nz; mark.gordon@mbie.govt.nz;  
Anne.Harland@mbie.govt.nz; anna.cook@customs.govt.nz; Steven.Sue003@msd.govt.nz; Peter.Salter001@msd.govt.nz; Lena.Sapunova002@msd.govt.nz; Gabrielle.Wilson@sia.govt.nz; Doug Lambert; Tina.MacLean@ird.govt.nz; Chris.Gillion@ird.govt.nz; Echo.Brooke-White@ird.govt.nz; Kirsten.Dale@ird.govt.nz; Susanna.Berry@ird.govt.nz; iwestbrooke@doc.govt.nz; Philip.MEREDITH@Corrections.govt.nz; Russell.Cooke@dia.govt.nz; andrew.d.henderson@dia.govt.nz; joanne.koreman@dia.govt.nz; Richard.foy@dia.govt.nz; amy.white@dia.govt.nz; andrei.zubkov@dia.govt.nz; Julia.Taylor@dia.govt.nz; Scott.Wilson@dia.govt.nz; jason.raven@dpmc.govt.nz; Jonno.Ingerson@hud.govt.nz; KGendall@linz.govt.nz; alana.corney@mpi.govt.nz; Wido.vanLijf@mpi.govt.nz; dan.elder@mfe.govt.nz; warren.gray@mfe.govt.nz; David.Sanders@education.govt.nz; Cabinet.Committee@education.govt.nz; Selena.Smeaton@education.govt.nz; Alex.Brunton@education.govt.nz; Shona.ramsay@education.govt.nz; ben.omeara@education.govt.nz; kerryn.fowlie@mfat.govt.nz; dean.ford@mfat.govt.nz; Dean.rutherford@health.govt.nz; simon\_ross@moh.govt.nz; Maree\_Roberts@moh.govt.nz; Helen.Aki@justice.govt.nz; Suzanne.Jones@justice.govt.nz; Claire.Ashcroft@justice.govt.nz; Paul.Henderson@justice.govt.nz; Terina.Cowan@mpp.govt.nz; Deb.Potter@women.govt.nz; anthony.pengelly@elections.govt.nz; sheree.demalmanche@police.govt.nz; juliet.armstrong@police.govt.nz; Daniel.Morrison@police.govt.nz; tanya.roth@police.govt.nz; Vasantha Krishnan; laura.miller@ot.govt.nz; daniel.miles@ot.govt.nz; Ross.boyd@ssc.govt.nz; hugo.vitalis@ssc.govt.nz; meredith.o'brien@ssc.govt.nz; heather.bagott@ssc.govt.nz; Jean.leroux@treasury.govt.nz; naomi.bennett@treasury.govt.nz; william.cosgriff@treasury.govt.nz; ben.creet@ncsc.govt.nz; Wendy.bennett@ncsc.govt.nz; Philip.Weir@ncsc.govt.nz; Matt.Haigh@rbnz.govt.nz; Papers2review@tearawhiti.govt.nz; clare.mckinlay@crownlaw.govt.nz; Eve Kennedy; Michael Harrison; Sam.Sargeant@gcsb.govt.nz; bishd@tpk.govt.nz  
**Subject:** FW: Early January 2020 - Agency contacts required for Cabinet papers for new data and statistics legislation

Mōrena koutou

A quick update on these Cabinet papers.

We are aiming to send the papers out today or tomorrow with comments due by the end of next week (COB Friday 24 January). We will also be happy to meet to discuss any issues you may raise. We are planning to take the papers to GOV on 5 March 2020.

Heoi anō  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
Principal Policy Advisor | Kaitohutohu Kaupapahere Mātāmua  
Legislative Policy | Kaupapahere Ture  
Data System Leadership | Kaiārahi Pūnaha Raraunga



# Unleashing

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**From:** Beverley Braybrook

**Sent:** Wednesday, 18 December 2019 11:11 AM

**To:** Simon.Lawrence2@acc.co.nz; zeeman.VanDerMerwe@acc.co.nz; Sebastian.Morgan-Lynch@acc.co.nz; Evelyn.Wareham@mbie.govt.nz; eileen.basher@mbie.govt.nz; mark.gordon@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; anna.cook@customs.govt.nz; Matthew.Spencer007@msd.govt.nz; Nic.Blakeley005@msd.govt.nz; Pennie.Pearce002@msd.govt.nz; Peter.Salter001@msd.govt.nz; Michelle.Bly001@msd.govt.nz; Rob.Hodgson009@msd.govt.nz; danny.mollan@sia.govt.nz; Kate.Kolich@sia.govt.nz; Fiona.Thomson@sia.govt.nz; Doug.Lambert@ird.govt.nz; Tina.MacLean@ird.govt.nz; Chris.Gillion@ird.govt.nz; Echo.Brooke-White@ird.govt.nz; Kirsten.Dale@ird.govt.nz; Susanna.Berry@ird.govt.nz; iwestbrooke@doc.govt.nz; peter.johnston@corrections.govt.nz; Alastair.Turrell@corrections.govt.nz; Russell.Cooke@dia.govt.nz; andrew.d.henderson@dia.govt.nz; joanne.koreman@dia.govt.nz; Richard.foy@dia.govt.nz; amy.white@dia.govt.nz; andrei.zubkov@dia.govt.nz; Julia.Taylor@dia.govt.nz; Scott.Wilson@dia.govt.nz; sarah.jaggs@dia.govt.nz; jason.raven@dpmc.govt.nz; Adam.brown@hud.govt.nz; wterry@linz.govt.nz; smetwell@linz.govt.nz; KGendall@linz.govt.nz; RFischer-Smith@linz.govt.nz; TJanssen@linz.govt.nz; alana.corney@mpi.govt.nz; Anita.easton@mpi.govt.nz; Wido.vanLijf@mpi.govt.nz; Stephen.Murray@mpi.govt.nz; dan.elder@mfe.govt.nz; warren.gray@mfe.govt.nz; Selena.Smeaton@education.govt.nz; Alex.Brunton@education.govt.nz; Shona.ramsay@education.govt.nz; ben.omeara@education.govt.nz; kerryn.fowlie@mfat.govt.nz; dean.ford@mfat.govt.nz; Dean.rutherford@health.govt.nz; simon\_ross@moh.govt.nz; Maree\_Roberts@moh.govt.nz; Helen.Aki@justice.govt.nz; chris.hubscher@justice.govt.nz; Anna.Johnston@justice.govt.nz; Terina.Cowan@mpp.govt.nz; Deb.Potter@women.govt.nz; anthony.pengelly@elections.govt.nz; sheree.demalmanche@police.govt.nz; juliet.armstrong@police.govt.nz; Daniel.Morrison@police.govt.nz; Vasantha.Krishnan@ot.govt.nz; caitlin.parr@ot.govt.nz; daniel.miles@ot.govt.nz; Ross.boyd@ssc.govt.nz; hugo.vitalis@ssc.govt.nz; meredith.o'brien@ssc.govt.nz; heather.bagott@ssc.govt.nz; Jean.leroux@treasury.govt.nz; naomi.bennett@treasury.govt.nz; william.cosgriff@treasury.govt.nz; Wendy.bennett@ncsc.govt.nz; Philip.Weir@ncsc.govt.nz; steffi.schuster@rbnz.govt.nz; tia.warbrick@justice.govt.nz; ngapera.hoerara@justice.govt.nz; Papers2review@tearawhiti.govt.nz; clare.mckinlay@crownlaw.govt.nz; vanessa.blackwood@privacy.org.nz; michael.harrison@privacy.org.nz; Sam.Sargeant@gcsb.govt.nz; nadia.ward@tpk.govt.nz; bishd@tpk.govt.nz

**Cc:** Megan Anderson <Megan.Anderson@stats.govt.nz>; Victoria Hinson <Victoria.Hinson@stats.govt.nz>

**Subject:** Early January 2020 - Agency contacts required for Cabinet papers for new data and statistics legislation

Kia ora koutou

**We will be sending out a suite of three draft Cabinet papers in week beginning 6 January 2020, with comments back by 17 January 2020.** If you will be away in early January please advise who will be best placed in your agency to review the papers.

## 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.

We are finalising **Cabinet papers seeking agreement to policy proposals for new data and statistics legislation**. 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.

Kia pai tō koutou hararei.

Heoi anō  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
Principal Policy Advisor | Kaitohutohu Kaupapahere Mātāmua  
Legislative Policy | Kaupapahere Ture  
Data System Leadership | Kaiārahi Pūnaha Raraunga  
Stats NZ Tatauranga Aotearoa  
DDI [REDACTED] | [stats.govt.nz](https://stats.govt.nz)

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## Ephraim Wilson

---

**From:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>  
**Sent:** Wednesday, 15 January 2020 5:44 pm  
**To:** Chris.McDowall@mbie.govt.nz; AJ.Millward@mbie.govt.nz; mark.gordon@mbie.govt.nz; Anne.Harland@mbie.govt.nz; anna.cook@customs.govt.nz; Steven.Sue003@msd.govt.nz; Peter.Salter001@msd.govt.nz; Lena.Sapunova002@msd.govt.nz; Gabrielle.Wilson@sia.govt.nz; Doug Lambert; Tina.MacLean@ird.govt.nz; Chris.Gillion@ird.govt.nz; Echo.Brooke-White@ird.govt.nz; Kirsten.Dale@ird.govt.nz; Susanna.Berry@ird.govt.nz; iwestbrooke@doc.govt.nz; Philip.MEREDITH@Corrections.govt.nz; Victoria Croucher; jason.raven@dpmc.govt.nz; Jonno.Ingerson@hud.govt.nz; KGenall@linz.govt.nz; alana.corney@mpi.govt.nz; Wido.vanLijf@mpi.govt.nz; dan.elder@mfe.govt.nz; warren.gray@mfe.govt.nz; David.Sanders@education.govt.nz; Cabinet.Committee@education.govt.nz; Selena.Smeaton@education.govt.nz; Alex.Brunton@education.govt.nz; Shona.ramsay@education.govt.nz; ben.omeara@education.govt.nz; kerryn.fowlie@mfat.govt.nz; dean.ford@mfat.govt.nz; Dean.rutherford@health.govt.nz; simon\_ross@moh.govt.nz; Maree\_Roberts@moh.govt.nz; Helen.Aki@justice.govt.nz; Suzanne.Jones@justice.govt.nz; Claire.Ashcroft@justice.govt.nz; Paul.Henderson@justice.govt.nz; Terina.Cowan@mpp.govt.nz; Deb.Potter@women.govt.nz; anthony.pengelly@elections.govt.nz; sheree.demalmanche@police.govt.nz; juliet.armstrong@police.govt.nz; Daniel.Morrison@police.govt.nz; tanya.roth@police.govt.nz; Vasantha Krishnan; laura.miller@ot.govt.nz; daniel.miles@ot.govt.nz; Ross.boyd@ssc.govt.nz; hugo.vitalis@ssc.govt.nz; meredith.o'brien@ssc.govt.nz; heather.bagott@ssc.govt.nz; Jean.leroux@treasury.govt.nz; naomi.bennett@treasury.govt.nz; william.cosgriff@treasury.govt.nz; ben.creet@ncsc.govt.nz; Wendy.bennett@ncsc.govt.nz; Philip.Weir@ncsc.govt.nz; Matt.Haigh@rbnz.govt.nz; Papers2review@tearawhiti.govt.nz; clare.mckinlay@crownlaw.govt.nz; Eve Kennedy; Michael Harrison; Sam.Sargeant@gcsb.govt.nz; bishd@tpk.govt.nz; Brian.Hesketh@acc.co.nz; danny.mollan@sia.govt.nz  
**Cc:** Megan Anderson; Marie Weavers  
**Subject:** New data and statistics legislation Cabinet papers  
**Attachments:** Cabinet paper 1 Overview.docx; Cab paper 2 Official statistics.docx; Cab Paper 3 Research and analysis.docx; Cabinet paper 4 Obligations and sanctions.docx

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.

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New data and statistics legislation will:

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- 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  
Data System Leadership | Kaiārahi Pūnaha Raraunga  
Stats NZ Tatauranga Aotearoa  
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## Notes on Stats Act reform

I have summarised the four Cabinet papers below. Papers 1 and 4 include space for a Commissioner comment which I have drafted.

### Previous consultation:

**July 2018:** Vee provides positive feedback on draft discussion document and cabinet paper, noting technical clarifications on Privacy Act interpretation (de-identification, use of unique identifiers, 'risk management' in Privacy Act exceptions but not in Act generally).

**November 2018:** JE signs out a submission on the public discussion document. Feedback summarised as:

- Generally supportive of proposals to modernise law, proposals require further policy consideration
- Supports continued use of de-identification/anonymised data sets – “provide one of the statutory underpinnings of the open government programme”
- Datasets containing personal information must be carefully and robustly de-identified before being released to protect the privacy of the individuals concerned. Personal information can be de-identified by applying various tools and techniques.
- JE noted he would work with Stats NZ to provide guidance and support on the appropriate privacy settings for de-identification, anonymisation and confidentialisation standards
- Supports proposals to clarify when and how data can be shared across govt, including that sharing/using identifiable info for the purposes of making decisions about individuals should continue to be provided by an agency's own leg or the Privacy Act; and that data shared for the purpose of research and analysis should not be used to make decisions about an individual without the consent of that individual.
- Document proposes the leg will enable the provision of data to reputable international organisations for ongoing use, provided certain protections and conditions are met. We noted new IPP 12 – “I support the intent that personal information sent out of New Zealand must remain subject to comparable privacy safeguards.”

**6 May 2019:** Stats provides a summary of the submissions

**15 January 2020:** Stats provides 4 Cabinet papers for Admin and Expenditure Review Committee

### Paper One:

Paper One summarises the background of the law reform and describes extensive previous public and inter-agency consultation. The paper considers that the current Act:

- Complicates and restricts the ability to acquire, integrate and share data in a modern data environment;
- Does not provide sufficient tools to influence the quality of data that informs the production of official statistics and integrated data assets for research and analysis;
- Does not provide sufficient foundation to ensure a coherent and co-ordinated approach to the production of statistics;
- Is not appropriately transparent about access to and use of data for research and analysis; and

- Is silent on the Maori-Crown relationship in relation to data and statistics.

Paper One seeks approval for the drafting of a new Bill (not amendment Bill) which would carry over the provisions of the current Act that remain fit for purpose. The purposes for the new Bill are:

- Ensure high-quality official statistics are produced to provide insights and measures of New Zealand's economic, environmental and social situation in order to drive policy change, and answer society's most important questions.
- Protect the interests of the people and organisations represented in, or by, the data the government uses for statistical purposes and for research and analysis through appropriate privacy, confidentiality, security and transparency settings.
- Recognise and respect the Crown's responsibility to consider and provide for Māori interests in data and statistics.
- Promote consistent and collaborative practices across government to enable the trusted collection, sharing and use of data for statistical purposes and research and analysis, and minimise the burden on those providing data by avoiding unnecessary duplication of requests.

Paper One asks Cabinet to agree to:

- The purpose of the new Act as described above
- Direct the Minister of Statistics to report back with proposals for amendments to legislation committee in mid-2020
- Authorise officials to consult on the draft version of amendments
- Authorise the Minister to make any subsequent policy decisions on related issues.

**Recommended Privacy Commissioner comment:**

"I support the goal of modernising the data and statistics legislation as outlined in this paper. I support the intention that the new Act should ensure high-quality official statistics continue to be produced while balancing important privacy rights and the interests of people and organisations represented in the data. I am happy to work with officials as they progress work on the policy settings for privacy matters, such as de-identification and confidentialisation."

**Paper two:**

Paper two discusses the value of official statistics. It notes that the complementary roles for the Minister of Statistics and the Government Statistician will continue. The Government Statistician's independence will remain but be modernised. There will no longer be a requirement for government agencies to seek approval from the Minister of Statistics before stopping, starting or making a substantial alteration to an existing survey. A waiver for this approval has been in place for over 30 years.

The proposal continues the requirement for the Government Statistician to define, lay down and promote observance of statistical best practice but with an additional requirement that agencies must follow these when applicable.

A major privacy change is that there will be a new statutory authority which enables other government agencies to collect data (either voluntarily or mandatorily) on behalf of the Government Statistician, for statistical purposes. Given the Privacy Act's existing exceptions to enable statistics and research this seems reasonable. One issue which is not elaborated

on in the paper is whether the collecting agency could then use the information collected for a different purpose. This would give rise to IPP 10 issues.

The reason provided for this new statutory authority is that agencies are increasingly cautious about collecting data to meet an identified statistical need if it is not also needed to deliver an agency function. The paper notes that this may become more pronounced as agencies prepare for implementation of the changes set out in the Privacy Bill. There is also an amended requirement for agencies to provide information on request by the Government Statistician about their data holdings if the data is, or may reasonably become, a data source for official statistics. The current requirement only applies to 'documents'.

Paper two also recommends a new requirement for the Government Statistician to consult with iwi, Maori organisations, government agencies, local government, interest groups and the public more generally before making decisions on the content and conduct of the Census. The paper also includes a new requirement to conduct a review following each census and providing the report of the review to the Minister of Statistics. The paper discusses de-identification and confidentialisation, and recommends changes to disclosure of information. The exception allowing disclosure of information provided by local authorities (current section 37A(f)) will be extended to all public service agencies. One new exception will allow the Government Statistician to disclose address information (not about occupants – it is intended that statistical confidentiality for individuals living at any address will be maintained). This is to improve the accuracy of specific locations (e.g. dwellings, businesses, farms, forests and community facilities).

**Commented [EK1]:** I think this change would allow stats to onwardly disclose info provided by public sector agencies, but I don't understand how the current s 37A works – it doesn't necessarily seem to be an IPP 11 override?

**There is no provision for Commissioner comment on paper two.**

### Paper 3 – research and analysis

The paper identifies an issue which is that the current legislative frameworks in Stats Act and Privacy Act allow for sharing, but don't:

- o Recognise and respect the Crown's responsibility to consider and provide for Maori interests in data and statistics
- o Provide sufficient guidance for decision-making related to sharing, integrating and accessing data
- o Require proactive transparency about who is using government-held data, how it is being used and what for.

The paper proposes to introduce a legislative framework that incorporates safeguards that address the following risk factors:

- o Research and analytic purposes – what the data can be used for
- o Researchers and analysts – who can access the data
- o Access environment – how the data can be accessed
- o Data – what level of confidentiality is applied to the data before access
- o Outputs – what results can be published.

**Commented [EK2]:** Comment could discuss the application of IPP 3 – doesn't extend to info which is disclosed under research exceptions. Spirit of privacy principles is transparency about use?



Details on the data sharing, access, outputs and methodologies of researchers will be subject to transparency requirements unless there are reasons for not publishing the information (e.g. it may be withheld under the OIA).

The framework will retain the public interest test for what research and analytic purposes data can be used for, but will add clarification to the test to account for:

- o The nature and extent of any likely benefit
- o The nature and extent of associated risks (e.g. impact on public trust and confidence), potential harms (e.g. to individuals or organisations from research that takes a deficit view of the issue at hand).
- o The context of data collection including the purpose of original data collection and information provided about possible future uses of data.

**Commented [EK3]:** We support this – fits the spirit of transparency requirements in IPP 3

There is no proposal for the new Bill to override existing protections that limit data sharing for research and analysis in other enactments. For example, restricted records under the BDMRRA are not shared for inclusion in the IDI and will remain outside of the IDI under the future Bill. The new Bill will also require data holders to take into account the benefits and risks associated with sharing data before doing so even when sharing is permitted.

The Bill will clarify that the Government Statistician may agree conditions of access in relation to data shared by non-state sector organisations (such as iwi, NGOs, research organisations) for research and analysis alongside government-held data.

These conditions may address the sensitivity of the data, commitments made to the people represented in the data, or other interests.

A further change is that the Government Statistician will be given the power to authorise access to identifiable data held by Stats NZ for organisations with legislative authority to access the same data at source or in another approved environment. This change will not enable agencies to use the data for direct service delivery, compliance or enforcement purposes. One example provided was mortality review committees (who already have the power to source any information they require). The reason for this change is that it may stop committees or other agencies from having to source the information from separate agencies and then integrate the data themselves. In some cases, the data available from Stats will also be of higher quality.

**Commented [EK4]:** This might be the most drastic change? But seems reasonable and proportionate.

Aside from this, the current requirement that outputs can't be published or disclosed in a form that could reasonably be expected to identify any individual, business or organisation unless an exception applies will be retained (current section 37(4)).

#### **No provision made for Privacy Commissioner comment**

#### **Paper 4 – obligations and sanctions**

The Bill will be drafted to ensure comparability with similar sanctions in other legislation, the Privacy Bill is specifically referenced. The current penalty of \$500 for individual and \$2000 for body corporate has not been amended since 1982 – all offences are currently treated the same.

Offences for failure to comply with obligations will continue to be criminal offences, though these will be modernised to specify the defence for any strict liability offences; specifying the appropriate mental element, and increasing fines at levels proportionate to the seriousness of the offence.

The Bill will introduce infringement notices for low level non-compliance associated with the obligation to provide data for production of official statistics.

The Bill will also include compliance notices for the obligation to safeguard and appropriately use data: aimed at researchers with “fixable harms” – such as requiring a researcher to do something or stop doing something in order to comply with the legislation.

**Draft Privacy Commissioner comment:**

I am pleased to see that privacy protective features will remain in the draft Bill, and that further safeguards to encourage compliance, such as compliance notices and modernised criminal offences, will be included. I support the additional transparency requirements discussed in paper three as they are consistent with the spirit of the Privacy Act. While I note the Government Statistician will be authorised to disclose identifiable information in certain circumstances, the restrictions and safeguards in the paper appear reasonable and proportionate to protect individuals from adverse action.

# Memorandum

**To** : John Edwards  
**cc:** : Michael Harrison  
**From** : Eve Kennedy  
**Date** : 23 January 2020  
**Subject** : **Data and Statistics Bill Cabinet Papers**

---

You are asked to agree to a Cabinet paper comment by 24 January for a suite of four papers seeking Cabinet policy agreement for the drafting of a Data and Statistics Bill to replace the Statistics Act 1975.

This memorandum outlines the recent history of the project, summarised the four Cabinet papers and my comments on the proposals. While no significant issues have been identified in the Cabinet papers, there are four privacy related changes of interest.

## Background

July 2018: Vee provided positive feedback on draft public discussion document and Cabinet paper, clarifying issues related to interpretation of the Privacy Act interpretation (such as de-identification and use of unique identifiers).

November 2018: You signed out a submission on the public discussion document. Feedback can be summarised as:

- Generally supportive of proposals to modernise law, proposals require further policy consideration.
- Supports continued use of de-identification/anonymised data sets – “provide one of the statutory underpinnings of the open government programme”.
- Datasets containing personal information must be carefully and robustly de-identified before being released to protect the privacy of the individuals concerned. Personal information can be de-identified by applying various tools and techniques.
- Privacy Commissioner noted he would work with Stats NZ to provide guidance and support on the appropriate privacy settings for de-identification, anonymisation and confidentialisation standards.
- Supports proposals to clarify when and how data can be shared across govt, including that sharing/using identifiable info for the purposes of making decisions about individuals should continue to be provided by an agency’s own leg or the Privacy Act; and that data shared for the purpose of research and analysis should not be used to make decisions about an individual without the consent of that individual.
- Document proposes the legislation will enable the provision of data to reputable international organisations for ongoing use, provided certain protections and conditions are met. We noted new IPP 12 – “I support the intent that personal information sent out of New Zealand must remain subject to comparable privacy safeguards.”



May 2019: Stats provides a summary of the public submissions.

### **Paper One: Overview**

Paper One summarises the background of the law reform and describes extensive previous public and inter-agency consultation. The paper considers that the current Act:

- complicates and restricts the ability to acquire, integrate and share data in a modern data environment;
- does not provide sufficient tools to influence the quality of data that informs the production of official statistics and integrated data assets for research and analysis;
- does not provide sufficient foundation to ensure a coherent and co-ordinated approach to the production of statistics;
- is not appropriately transparent about access to and use of data for research and analysis; and
- is silent on the Māori-Crown relationship in relation to data and statistics.

Paper One seeks approval for the drafting of a new Bill (not amendment Bill) which would carry over the provisions of the current Act that remain fit for purpose. The paper proposes that the purposes for the new Bill are:

- Ensure high-quality official statistics are produced to provide insights and measures of New Zealand's economic, environmental and social situation in order to drive policy change, and answer society's most important questions.
- Protect the interests of the people and organisations represented in, or by, the data the government uses for statistical purposes and for research and analysis through appropriate privacy, confidentiality, security and transparency settings.
- Recognise and respect the Crown's responsibility to consider and provide for Māori interests in data and statistics.
- Promote consistent and collaborative practices across government to enable the trusted collection, sharing and use of data for statistical purposes and research and analysis, and minimise the burden on those providing data by avoiding unnecessary duplication of requests.

Paper One asks Cabinet to agree to:

- The purpose of the new Act as described above
- Direct the Minister of Statistics to report back with proposals for amendments to legislation committee in mid-2020
- Authorise officials to consult on the draft version of amendments
- Authorise the Minister to make any subsequent policy decisions on related issues.

**My comment:** None of these objectives or new purposes raise concerns. The increased focus on transparency about use of statistical information is consistent with IPP 3.

### **Paper Two: Official Statistics System**

Paper Two discusses the value of official statistics.

This paper includes three proposals that touch on privacy.

1. There will be a new statutory authority which enables other government agencies to collect data (either voluntarily or mandatorily) on behalf of the Government Statistician, for statistical purposes. The reason provided for this new statutory

authority is that agencies are increasingly cautious about collecting data to meet an identified statistical need if it is not also needed to deliver an agency function.

**My comment:** Given the Privacy Act's existing exceptions to enable statistics and research this appears reasonable. One issue that is not elaborated on in the paper is whether the collecting agency could then use the information collected for a different purpose. This would give rise to IPP 10 issues. I suggest we offer to work with Stats on the policy setting for this amendment.

2. The exception allowing disclosure of information provided by local authorities (current section 37A(f)) will be extended to all public sector agencies. My understanding is that this would allow Stats NZ to disclose identifying information that it receives from the public service, unless another enactment prevents that disclosure. This is to align with expectations about transparency for public institutions.

**My comment:** the current proposal to expand section 37A(f) to include information from public sector agencies need clarification. I do not expect that this will include personal information, however the current section 37A does provide for disclosure of identifying information. It may be that they consider the draft exception will be restricted by the Privacy Act. I have asked Stats to clarify their position on this exception. Provided it is not intended to include personal information, I do not consider this to be an issue.

3. A new exception will provide for the Government Statistician to disclose address information (not about occupants – it is intended that statistical confidentiality for individuals living at any address will be maintained). This is to improve the accuracy of specific locations (e.g. dwellings, businesses, farms, forests and community facilities).

**My comment:** This appears reasonable and proportionate.

Other changes (FYI only) include:

- That the complementary roles for the Minister of Statistics and the Government Statistician will continue.
- The Government Statistician's independence will remain but be modernised.
- There will no longer be a requirement for government agencies to seek approval from the Minister of Statistics before stopping, starting or making a substantial alteration to an existing survey. A waiver for this approval has been in place for over 30 years.
- The proposal continues the current requirement for the Government Statistician to define, lay down and promote observance of statistical best practice (current section 14) but with an additional requirement that agencies must follow these when applicable.
- There is also an amended requirement for agencies to provide information on request by the Government Statistician about their data holdings if the data is, or may reasonably become, a data source for official statistics. The current requirement only applies to 'documents'.

- The paper proposes a new requirement for the Government Statistician to consult with iwi, Maori organisations, government agencies, local government, interest groups and the public more generally before making decisions on the content and conduct of the Census. The paper also includes a new requirement to conduct a review following each census and providing the report of the review to the Minister of Statistics.

### **Paper Three: Research and Analysis**

The paper identifies that the current legislative frameworks in the Statistics Act and Privacy Act allow for sharing, but do not:

- recognise and respect the Crown's responsibility to consider and provide for Maori interests in data and statistics;
- provide sufficient guidance for decision-making related to sharing, integrating and accessing data; and
- require proactive transparency about who is using government-held data, how it is being used and what for.

The paper proposes to introduce a legislative framework that incorporates safeguards to address data use, access, access environment, confidentiality levels, and outputs.

There is one significant privacy related change proposed:

1. The Government Statistician will be given the power to authorise access to identifiable data held by Stats NZ for organisations with legislative authority to access the same data at source or in another approved environment. This change will not enable agencies to use the data for direct service delivery, compliance or enforcement purposes. One example provided was mortality review committees (who already have the power to source any information they require).

The reason for this change is that it may stop committees or other agencies from having to source the information from separate agencies and then integrate the data themselves. In some cases, the data available from Stats will also be of higher quality.

**My comment:** while this appears reasonable and proportionate given the appropriate safeguards and restrictions on data use, I have struggled to identify agencies other than review committees or solely fact-finding bodies that would benefit from this limited access.

Other changes (FYI only) proposed by this paper include:

- Details on the data sharing, access, outputs and methodologies of researchers will be subject to transparency requirements unless there are reasons for not publishing the information (e.g. it may be withheld under the OIA).
- The legislative framework will retain the public interest test for what research and analytic purposes data can be used for, but will add clarification to the test to account for:
  - o The nature and extent of any likely benefit

- The nature and extent of associated risks (e.g. impact on public trust and confidence), potential harms (e.g. to individuals or organisations from research that takes a deficit view of the issue at hand).
- The context of data collection including the purpose of original data collection and information provided about possible future uses of data.
- There is no proposal for the new Bill to override existing protections that limit data sharing for research and analysis in other enactments. For example, restricted records under the Births, Deaths, Marriages and Relationships Registration Act are not shared for inclusion in the IDI and will remain outside of the IDI under the future Bill. The new Bill will also require data holders to take into account the benefits and risks associated with sharing data before doing so even when sharing is permitted.
- The Bill will clarify that the Government Statistician may agree conditions of access in relation to data shared by non-state sector organisations (such as iwi, NGOs, research organisations) for research and analysis alongside government-held data.
- These conditions may address the sensitivity of the data, commitments made to the people represented in the data, or other interests.
- The current requirement that outputs can't be published or disclosed in a form that could reasonably be expected to identify any individual, business or organisation unless an exception applies will be retained (current section 37(4)).

#### **Paper Four: obligations and sanctions**

There are no significant privacy issues raised in paper four. The main changes proposed include:

- The Bill will be drafted to ensure comparability with similar sanctions in other legislation, the Privacy Bill is specifically referenced. The current penalty of \$500 for individual and \$2000 for body corporate has not been amended since 1982 – all offences are currently treated the same.
- Offences for failure to comply with obligations will continue to be criminal offences, though these will be modernised to specify the defence for any strict liability offences; specifying the appropriate mental element, and increasing fines at levels proportionate to the seriousness of the offence.
- The Bill will introduce infringement notices for low level non-compliance associated with the obligation to provide data for production of official statistics.
- The Bill will also include compliance notices for the obligation to safeguard and appropriately use data: aimed at researchers with “fixable harms” – such as requiring a researcher to do something or stop doing something in order to comply with the legislation.

#### **Proposed Commissioner comment:**

“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.”



## Ephraim Wilson

---

**From:** Eve Kennedy  
**Sent:** Friday, 24 January 2020 8:33 am  
**To:** 'Megan Anderson'  
**Cc:** Marie Weavers  
**Subject:** RE: Question about Cab papers

Thanks Megan, that's great! I thought that would be the case.

Thanks very much for your time.

Kind regards,

Eve

### Eve Kennedy, Policy Adviser

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**From:** Megan Anderson <Megan.Anderson@stats.govt.nz>  
**Sent:** Friday, 24 January 2020 8:16 am  
**To:** Eve Kennedy <Eve.Kennedy@privacy.org.nz>  
**Cc:** Marie Weavers <Marie.Weavers@stats.govt.nz>  
**Subject:** RE: Question about Cab papers

Hi Eve

Thanks for your question. And no it's the not the intention at all to disclose personal information/identifiable information under the proposed change extending the local authority exception.

The wording of s 37A(f) is a bit strange already because on an ordinary meaning read it appears Stats NZ could disclose any information at all that is supplied by a local authority, however, we've also interpreted this provision in line with it's purpose.

A practical example is building consents. Without this exception we would be unable to publish statistics on building consents per local authority. So the exception is about identifying the local authority rather than identifying personal information about the consents.

At the time the legislation was being drafted in the early 1970s, it wasn't even considered that an exception was needed for central government, and s 37A(f) was intended to ensure that local authorities could also be identified. The proposed change is to make it clear that government agencies can be identified in relation to the functions they perform.

Happy to discuss further if helpful, or if you have further questions.

Thanks  
Megan

Megan Anderson (pronouns: she/her/hers)  
Manager, 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:** Eve Kennedy <[Eve.Kennedy@privacy.org.nz](mailto:Eve.Kennedy@privacy.org.nz)>  
**Sent:** Thursday, 23 January 2020 4:05 PM  
**To:** Megan Anderson <[Megan.Anderson@stats.govt.nz](mailto:Megan.Anderson@stats.govt.nz)>  
**Cc:** Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>  
**Subject:** Question about Cab papers

Hi Megan, Marie

Sorry for the last minute email on the Cabinet papers that were sent through last week. I have prepared a briefing for the Commissioner but I have one question that I have been unable to resolve within my team and I was hoping you could help.

Paragraph 59 of paper two refers to an extension of the current local authority exception which allows the Government Statistician to disclose information where it was provided by the local authority. The paper discusses extending to the exception to "details about any public sector agency". Is this intended to include disclosure of personal information/identifiable information? Your [guidance](#) on the website clarifies that s 37A can be used to disclose identifying information. It would seem to us that extending 37A(f) to include information from public sector agencies would be a significant departure from the current model, so I am keen to ensure that my understanding of para 59 is correct.

Thanks

Eve

**Eve Kennedy, Policy Adviser**  
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## Ephraim Wilson

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**From:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>  
**Sent:** Monday, 27 January 2020 8:47 am  
**To:** Eve Kennedy  
**Cc:** Michael Harrison  
**Subject:** RE: New data and statistics legislation Cabinet papers

Thanks Eve.

**Beverley Braybrook** (pronouns: she/her/hers)  
Principal Policy Advisor | Kaitohutohu Kaupapahere Mātāmua  
Legislative Policy | Kaupapahere Ture  
Data System Leadership | Kaiārahi Pūnaha Raraunga  
Stats NZ Tatauranga Aotearoa  
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# Unleashing

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**From:** Eve Kennedy <Eve.Kennedy@privacy.org.nz>  
**Sent:** Friday, 24 January 2020 4:46 PM  
**To:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>  
**Cc:** Michael Harrison <Michael.Harrison@privacy.org.nz>  
**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.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>

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

**To:** [Chris.McDowall@mbie.govt.nz](mailto:Chris.McDowall@mbie.govt.nz); [AJ.Millward@mbie.govt.nz](mailto:AJ.Millward@mbie.govt.nz); [mark.gordon@mbie.govt.nz](mailto:mark.gordon@mbie.govt.nz); [Anne.Harland@mbie.govt.nz](mailto:Anne.Harland@mbie.govt.nz); [anna.cook@customs.govt.nz](mailto:anna.cook@customs.govt.nz); [Steven.Sue003@msd.govt.nz](mailto:Steven.Sue003@msd.govt.nz); [Peter.Salter001@msd.govt.nz](mailto:Peter.Salter001@msd.govt.nz); [Lena.Sapunova002@msd.govt.nz](mailto:Lena.Sapunova002@msd.govt.nz); [Gabrielle.Wilson@sia.govt.nz](mailto:Gabrielle.Wilson@sia.govt.nz); Doug Lambert <[doug.lambert@ird.govt.nz](mailto:doug.lambert@ird.govt.nz)>; [Tina.MacLean@ird.govt.nz](mailto:Tina.MacLean@ird.govt.nz); [Chris.Gillion@ird.govt.nz](mailto:Chris.Gillion@ird.govt.nz); [Echo.Brooke-White@ird.govt.nz](mailto:Echo.Brooke-White@ird.govt.nz); [Kirsten.Dale@ird.govt.nz](mailto:Kirsten.Dale@ird.govt.nz); [Susanna.Berry@ird.govt.nz](mailto:Susanna.Berry@ird.govt.nz); [iwestbrooke@doc.govt.nz](mailto:iwestbrooke@doc.govt.nz); [Philip.MEREDITH@Corrections.govt.nz](mailto:Philip.MEREDITH@Corrections.govt.nz); Victoria Croucher <[Victoria.Croucher@dia.govt.nz](mailto:Victoria.Croucher@dia.govt.nz)>; [jason.raven@dpmc.govt.nz](mailto:jason.raven@dpmc.govt.nz); [Jonno.Ingerson@hud.govt.nz](mailto:Jonno.Ingerson@hud.govt.nz); [KGendall@linz.govt.nz](mailto:KGendall@linz.govt.nz); [alana.corney@mpi.govt.nz](mailto:alana.corney@mpi.govt.nz); [Wido.vanLijf@mpi.govt.nz](mailto:Wido.vanLijf@mpi.govt.nz); [dan.elder@mfe.govt.nz](mailto:dan.elder@mfe.govt.nz); [warren.gray@mfe.govt.nz](mailto:warren.gray@mfe.govt.nz); [David.Sanders@education.govt.nz](mailto:David.Sanders@education.govt.nz); [Cabinet.Committee@education.govt.nz](mailto:Cabinet.Committee@education.govt.nz); [Selena.Smeaton@education.govt.nz](mailto:Selena.Smeaton@education.govt.nz); [Alex.Brunt@education.govt.nz](mailto:Alex.Brunt@education.govt.nz); [Shona.ramsay@education.govt.nz](mailto:Shona.ramsay@education.govt.nz); [ben.omeara@education.govt.nz](mailto:ben.omeara@education.govt.nz); [kerryn.fowlie@mfat.govt.nz](mailto:kerryn.fowlie@mfat.govt.nz); [dean.ford@mfat.govt.nz](mailto:dean.ford@mfat.govt.nz); [Dean.rutherford@health.govt.nz](mailto:Dean.rutherford@health.govt.nz); [simon\\_ross@moh.govt.nz](mailto:simon_ross@moh.govt.nz); [Maree\\_Roberts@moh.govt.nz](mailto:Maree_Roberts@moh.govt.nz); [Helen.Aki@justice.govt.nz](mailto:Helen.Aki@justice.govt.nz); [Suzanne.Jones@justice.govt.nz](mailto:Suzanne.Jones@justice.govt.nz); [Claire.Ashcroft@justice.govt.nz](mailto:Claire.Ashcroft@justice.govt.nz); [Paul.Henderson@justice.govt.nz](mailto:Paul.Henderson@justice.govt.nz); [Terina.Cowan@mpp.govt.nz](mailto:Terina.Cowan@mpp.govt.nz); [Deb.Potter@women.govt.nz](mailto:Deb.Potter@women.govt.nz); [anthony.pengelly@elections.govt.nz](mailto:anthony.pengelly@elections.govt.nz); [sheree.demalmanche@police.govt.nz](mailto:sheree.demalmanche@police.govt.nz); [juliet.armstrong@police.govt.nz](mailto:juliet.armstrong@police.govt.nz); [Daniel.Morrison@police.govt.nz](mailto:Daniel.Morrison@police.govt.nz); [tanya.roth@police.govt.nz](mailto:tanya.roth@police.govt.nz); Vasantha Krishnan <[Vasantha.krishnan@ot.govt.nz](mailto:Vasantha.krishnan@ot.govt.nz)>; [laura.miller@ot.govt.nz](mailto:laura.miller@ot.govt.nz); [daniel.miles@ot.govt.nz](mailto:daniel.miles@ot.govt.nz); [Ross.boyd@ssc.govt.nz](mailto:Ross.boyd@ssc.govt.nz); [hugo.vitalis@ssc.govt.nz](mailto:hugo.vitalis@ssc.govt.nz); [meredith.o'brien@ssc.govt.nz](mailto:meredith.o'brien@ssc.govt.nz); [heather.bagott@ssc.govt.nz](mailto:heather.bagott@ssc.govt.nz); [Jean.leroux@treasury.govt.nz](mailto:Jean.leroux@treasury.govt.nz); [naomi.bennett@treasury.govt.nz](mailto:naomi.bennett@treasury.govt.nz); [william.cosgriff@treasury.govt.nz](mailto:william.cosgriff@treasury.govt.nz); [ben.creet@ncsc.govt.nz](mailto:ben.creet@ncsc.govt.nz); [Wendy.bennett@ncsc.govt.nz](mailto:Wendy.bennett@ncsc.govt.nz); [Philip.Weir@ncsc.govt.nz](mailto:Philip.Weir@ncsc.govt.nz); [Matt.Haigh@rbnz.govt.nz](mailto:Matt.Haigh@rbnz.govt.nz); [Papers2review@tearawhiti.govt.nz](mailto:Papers2review@tearawhiti.govt.nz); [clare.mckinlay@crownlaw.govt.nz](mailto:clare.mckinlay@crownlaw.govt.nz); Eve Kennedy <[Eve.Kennedy@privacy.org.nz](mailto:Eve.Kennedy@privacy.org.nz)>; Michael Harrison <[Michael.Harrison@privacy.org.nz](mailto:Michael.Harrison@privacy.org.nz)>; [Sam.Sargeant@gcsb.govt.nz](mailto:Sam.Sargeant@gcsb.govt.nz); [bishd@tpk.govt.nz](mailto:bishd@tpk.govt.nz); [Brian.Hesketh@acc.co.nz](mailto:Brian.Hesketh@acc.co.nz); [danny.mollan@sia.govt.nz](mailto:danny.mollan@sia.govt.nz)

**Cc:** Megan Anderson <[Megan.Anderson@stats.govt.nz](mailto:Megan.Anderson@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.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  
Data System Leadership | Kaiārahi Pūnaha Raraunga  
Stats NZ Tatauranga Aotearoa  
DDI [REDACTED] | [stats.govt.nz](https://stats.govt.nz)

# Unleashing

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## Ephraim Wilson

---

**From:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>  
**Sent:** Thursday, 13 February 2020 6:17 pm  
**To:** Eve Kennedy  
**Cc:** Michael Harrison; Megan Anderson; Marie Weavers  
**Subject:** RE: New data and statistics legislation Cabinet papers  
**Attachments:** Paper 1 - Overview (1).docx; Paper 2 - Official statistics (2).docx; Paper 3 - Research and analysis (3).docx; Paper 4 - Obligations and sanctions (4).docx

Kia ora

Thank you for your helpful feedback on the draft Cabinet papers for new data and statistics legislation. Attached are the revised Cabinet papers that have been provided to our Minister for Ministerial and inter-party consultation.

It was good to hear that there was general support for the proposals. The main areas of feedback are summarised below along with our response.

### *Scope and application to agencies*

Several agencies commented on the scope of new data and statistics legislation (eg, what data is covered and whether proposals apply to just Stats NZ or all government agencies). We have amended the Cabinet papers to increase clarity. New data and statistics legislation will provide the authorising framework for Stats NZ to produce statistics (and ensure that Stats NZ can access/request the data needed for this purpose), lead and co-ordinate the official statistics system (which includes other producer agencies), and integrate and provide safe access to data for research and analysis in the public interest (we intend to talk further with agencies who may wish to adopt the same research and analysis framework). It does not cover sharing and/or use of data by agencies to deliver functions such as direct service delivery, regulatory compliance and law enforcement.

We will work with SSC to ensure that references to government agencies (departments, departmental agencies, producers of tier 1 statistics that are not departments or departmental agencies) aligns with SSC's work to describe the public service agencies through their reform work including, the Public Service Legislation Bill.

We have added content to Paper 2 describing how ad hoc changes to legislation may unintentionally or unnecessarily limit the Government Statistician's access to data for producing statistics. We propose working with agencies to identify and agree what barriers should be addressed and take any proposed changes back to Cabinet prior to the introduction of the Bill (we have already started this work, and paper 2 reflects this by reference to the example of the Electoral Act)..

### *Relationship between Māori and the Crown*

Agencies noted that, while the papers talk about the importance of new legislation reflecting the Māori Crown relationship, and Māori needs and interests in data and statistics, there was insufficient detail in the papers about specific legislative provisions or impact on practice. As the 1975 Act is completely silent on the Treaty of Waitangi, our Minister has taken the approach to first seek Cabinet agreement that the new legislation should reflect, or be consistent, with the principles of the Treaty, in the way proposed in paper 1. The Minister expects us to continue to work with Māori and iwi organisations who have informed the development of the proposals, and with interested agencies, to ensure that the Bill as drafted does this. The proposals have built on Stats NZ's broader engagement and relationships with Māori and iwi organisations including work on the iwi statistical classification, Māori data governance, the tikanga framework for research and analysis, and work to address data gaps in the 2018 Census.

### *Additional content*

We have attached the Appendix 1: *Summary of Proposed Main Changes* to Paper 1 – Overview to help clarify the nature of proposed changes, that is, whether they continue, remove or alter existing provisions.



We have added detail to the proposals to Paper 2 – Official statistics system in respect of data and statistical priorities at a system level to further describe the multi-year, cross-government statistical work programme (currently done via the Cabinet-agreed and mandated Tier 1 statistics process) and the requirement for the Government Statistician to lead its development in consultation with other agencies.

#### *GCDS (Government Chief Data Steward)*

A couple of agencies queried whether we should take the opportunity to create a statutory role for the Government Chief Data Steward. We have considered this over the course of the work, however, given the public service reform work of SSC, other functional lead roles (particularly those closely related to the GCDS), the wider mandate of the GCDS (which includes for example, supporting data ethics for uses other than statistics, research and analysis) and the flex that role needs to adjust to new and emerging data issues (for example, government use of algorithms) that it wouldn't be appropriate at this time to create a statutory role.

#### *Primary or secondary legislation*

Some agencies suggested that some proposals could be more appropriate in regulations, guidance or standards rather than in the new legislation. We will work with PCO during drafting to ensure the Bill isn't overly prescriptive as the intention is, as agencies suggest, to use regulations, guidance or standards for detail whenever appropriate.

#### *Implementation*

We received feedback from several agencies which will be very helpful as we progress this work and begin implementation planning. We appreciate that will also likely be new issues arising that we will also need to work through. We appreciate commitments to work with us and we look forward to doing so.

#### Specific agency comment

As requested, we have added the Privacy Commissioner's comment in Paper 1 – Overview of policy decisions. Thank you.

#### Next steps

We have provided the Cabinet papers to our Minister for Ministerial and inter-party consultation, with a view to them being considered at the Cabinet Government Administration and Expenditure Review Committee on 5 March 2020.

We appreciate your continued support and contribution.  
Thank you again for your feedback.

Heoi anō  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
Principal Policy Advisor | Kaitohutohu Kaupapahere Mātāmua  
Legislative Policy | Kaupapahere Ture  
Data System Leadership | Kaiārahi Pūnaha Raraunga  
Stats NZ Tatauranga Aotearoa  
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# Unleashing

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---

**From:** Eve Kennedy <Eve.Kennedy@privacy.org.nz>  
**Sent:** Friday, 24 January 2020 4:46 PM  
**To:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>

**Cc:** Michael Harrison <Michael.Harrison@privacy.org.nz>  
**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**

**Office of the Privacy Commissioner** Te Mana Matapono Matatapu  
PO Box 10094, The Terrace, Wellington 6143  
Level 8, 109 Featherston Street, Wellington, New Zealand  
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[privacy.org.nz](http://privacy.org.nz)



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---

**From:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>

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

**To:** [Chris.McDowall@mbie.govt.nz](mailto:Chris.McDowall@mbie.govt.nz); [AJ.Millward@mbie.govt.nz](mailto:AJ.Millward@mbie.govt.nz); [mark.gordon@mbie.govt.nz](mailto:mark.gordon@mbie.govt.nz); [Anne.Harland@mbie.govt.nz](mailto:Anne.Harland@mbie.govt.nz); [anna.cook@customs.govt.nz](mailto:anna.cook@customs.govt.nz); [Steven.Sue003@msd.govt.nz](mailto:Steven.Sue003@msd.govt.nz); [Peter.Salter001@msd.govt.nz](mailto:Peter.Salter001@msd.govt.nz); [Lena.Sapunova002@msd.govt.nz](mailto:Lena.Sapunova002@msd.govt.nz); [Gabrielle.Wilson@sia.govt.nz](mailto:Gabrielle.Wilson@sia.govt.nz); Doug Lambert <[doug.lambert@ird.govt.nz](mailto:doug.lambert@ird.govt.nz)>; [Tina.MacLean@ird.govt.nz](mailto:Tina.MacLean@ird.govt.nz); [Chris.Gillion@ird.govt.nz](mailto:Chris.Gillion@ird.govt.nz); [Echo.Brooke-White@ird.govt.nz](mailto:Echo.Brooke-White@ird.govt.nz); [Kirsten.Dale@ird.govt.nz](mailto:Kirsten.Dale@ird.govt.nz); [Susanna.Berry@ird.govt.nz](mailto:Susanna.Berry@ird.govt.nz); [iwestbrooke@doc.govt.nz](mailto:iwestbrooke@doc.govt.nz); [Philip.MEREDITH@Corrections.govt.nz](mailto:Philip.MEREDITH@Corrections.govt.nz); Victoria Croucher <[Victoria.Croucher@dia.govt.nz](mailto:Victoria.Croucher@dia.govt.nz)>; [jason.raven@dpmc.govt.nz](mailto:jason.raven@dpmc.govt.nz); [Jonno.Ingerson@hud.govt.nz](mailto:Jonno.Ingerson@hud.govt.nz); [KGendall@linz.govt.nz](mailto:KGendall@linz.govt.nz); [alana.corney@mpi.govt.nz](mailto:alana.corney@mpi.govt.nz); [Wido.vanLijf@mpi.govt.nz](mailto:Wido.vanLijf@mpi.govt.nz); [dan.elder@mfe.govt.nz](mailto:dan.elder@mfe.govt.nz); [warren.gray@mfe.govt.nz](mailto:warren.gray@mfe.govt.nz); [David.Sanders@education.govt.nz](mailto:David.Sanders@education.govt.nz); [Cabinet.Committee@education.govt.nz](mailto:Cabinet.Committee@education.govt.nz); [Selena.Smeaton@education.govt.nz](mailto:Selena.Smeaton@education.govt.nz); [Alex.Brunton@education.govt.nz](mailto:Alex.Brunton@education.govt.nz); [Shona.ramsay@education.govt.nz](mailto:Shona.ramsay@education.govt.nz); [ben.omeara@education.govt.nz](mailto:ben.omeara@education.govt.nz); [kerryn.fowlie@mfat.govt.nz](mailto:kerryn.fowlie@mfat.govt.nz); [dean.ford@mfat.govt.nz](mailto:dean.ford@mfat.govt.nz); [Dean.rutherford@health.govt.nz](mailto:Dean.rutherford@health.govt.nz); [simon\\_ross@moh.govt.nz](mailto:simon_ross@moh.govt.nz); [Maree\\_Roberts@moh.govt.nz](mailto:Maree_Roberts@moh.govt.nz); [Helen.Aki@justice.govt.nz](mailto:Helen.Aki@justice.govt.nz); [Suzanne.Jones@justice.govt.nz](mailto:Suzanne.Jones@justice.govt.nz); [Claire.Ashcroft@justice.govt.nz](mailto:Claire.Ashcroft@justice.govt.nz); [Paul.Henderson@justice.govt.nz](mailto:Paul.Henderson@justice.govt.nz); [Terina.Cowan@mpp.govt.nz](mailto:Terina.Cowan@mpp.govt.nz);

[Deb.Potter@women.govt.nz](mailto:Deb.Potter@women.govt.nz); [anthony.pengelly@elections.govt.nz](mailto:anthony.pengelly@elections.govt.nz); [sheree.demalmanche@police.govt.nz](mailto:sheree.demalmanche@police.govt.nz); [juliet.armstrong@police.govt.nz](mailto:juliet.armstrong@police.govt.nz); [Daniel.Morrison@police.govt.nz](mailto:Daniel.Morrison@police.govt.nz); [tanya.roth@police.govt.nz](mailto:tanya.roth@police.govt.nz); Vasantha Krishnan <[Vasantha.krishnan@ot.govt.nz](mailto:Vasantha.krishnan@ot.govt.nz)>; [laura.miller@ot.govt.nz](mailto:laura.miller@ot.govt.nz); [daniel.miles@ot.govt.nz](mailto:daniel.miles@ot.govt.nz); [Ross.boyd@ssc.govt.nz](mailto:Ross.boyd@ssc.govt.nz); [hugo.vitalis@ssc.govt.nz](mailto:hugo.vitalis@ssc.govt.nz); [meredith.o'brien@ssc.govt.nz](mailto:meredith.o'brien@ssc.govt.nz); [heather.bagott@ssc.govt.nz](mailto:heather.bagott@ssc.govt.nz); [Jean.leroux@treasury.govt.nz](mailto:Jean.leroux@treasury.govt.nz); [naomi.bennett@treasury.govt.nz](mailto:naomi.bennett@treasury.govt.nz); [william.cosgriff@treasury.govt.nz](mailto:william.cosgriff@treasury.govt.nz); [ben.creet@ncsc.govt.nz](mailto:ben.creet@ncsc.govt.nz); [Wendy.bennett@ncsc.govt.nz](mailto:Wendy.bennett@ncsc.govt.nz); [Philip.Weir@ncsc.govt.nz](mailto:Philip.Weir@ncsc.govt.nz); [Matt.Haigh@rbnz.govt.nz](mailto:Matt.Haigh@rbnz.govt.nz); [Papers2review@tearawhiti.govt.nz](mailto:Papers2review@tearawhiti.govt.nz); [clare.mckinlay@crownlaw.govt.nz](mailto:clare.mckinlay@crownlaw.govt.nz); Eve Kennedy <[Eve.Kennedy@privacy.org.nz](mailto:Eve.Kennedy@privacy.org.nz)>; Michael Harrison <[Michael.Harrison@privacy.org.nz](mailto:Michael.Harrison@privacy.org.nz)>; [Sam.Sargeant@gcsb.govt.nz](mailto:Sam.Sargeant@gcsb.govt.nz); [bishd@tpk.govt.nz](mailto:bishd@tpk.govt.nz); [Brian.Hesketh@acc.co.nz](mailto:Brian.Hesketh@acc.co.nz); [danny.mollan@sia.govt.nz](mailto:danny.mollan@sia.govt.nz)  
**Cc:** Megan Anderson <[Megan.Anderson@stats.govt.nz](mailto:Megan.Anderson@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.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.

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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)
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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  
Data System Leadership | Kaiārahi Pūnaha Raraunga  
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## Ephraim Wilson

---

**From:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>  
**Sent:** Monday, 1 June 2020 9:24 pm  
**To:** Kate.Hamilton@acc.co.nz; Anne.Harland@mbie.govt.nz; anna.cook@customs.govt.nz; Peter.Salter001@msd.govt.nz; Vaughan.Dodd001@msd.govt.nz; Grant.Guillosson@sia.govt.nz; Martin.Neylan@ird.govt.nz; ewright@doc.govt.nz; peter.johnston@corrections.govt.nz; Victoria.Croucher@dia.govt.nz; jason.raven@dpmc.govt.nz; Jonno.Ingerson@hud.govt.nz; KGendall@linz.govt.nz; alana.corney@mpi.govt.nz; Dan Elder; David.Sanders@education.govt.nz; james.messent@mfat.govt.nz; Oliver.Poppelwell@health.govt.nz; Claire.Ashcroft@justice.govt.nz; Ana.Koloto@mpp.govt.nz; Deb.Potter@women.govt.nz; Kristina.Temel@elections.govt.nz; Adriana.Nickless@police.govt.nz; Ann.Walker@ot.govt.nz; Margaret.Mabbett@ssc.govt.nz; amy.russell@treasury.govt.nz; Wendy.bennett@ncsc.govt.nz; Matt.Haigh@rbnz.govt.nz; Andrew.Hampton@tearawhiti.govt.nz; Pauline.Courtney@crownlaw.govt.nz; Eve Kennedy; Sam.Sargeant@gcsb.govt.nz; bishd@tpk.govt.nz  
**Cc:** Marie Weavers  
**Subject:** Data and Statistics Bill

Kia ora koutou

We have been progressing work on the Data and Statistics Bill. We will be engaging with agencies soon on:

- proposed amendments to agency-specific legislation to ensure consistency with policy for the Bill; and
- to get your feedback as work progresses on the draft Bill.

**Can you please advise by Friday 5 June whether you or another person will be the contact for your agency?**

### Further information

In March 2020, Cabinet agreed to drafting a Data and Statistics Bill to replace the Statistics Act 1975 and policy changes relating to the official statistics system, research and analysis, and obligations and sanctions. In the main, the changes are a case of the law catching up with data and statistical best practice domestically and internationally. The new Act will:

- provide a better system focus by requiring the Government Statistician (GS) to lead development of, and advise the Minister on, a regular 5-year cross-government statistical work programme
- give effect to the principles of the Treaty of Waitangi by recognising the Crown's responsibility to consider and provide for Māori interests in relation to data and statistics
- require government agencies to follow statistical best practice, including those practices defined, laid down or promoted by the GS
- clarify that the obligation to provide information for official statistics applies whenever a mandatory data request is made (not just when in the form of a survey)
- provide statutory authority for other government agencies to collect data on behalf of the GS for statistical purposes
- continue to require the GS to undertake a Census every five years, with requirements for consultation before, and a review following, each Census
- include safeguards for sharing, integrating and accessing data for research and analysis, with new requirements for transparency
- modernise and update offences and penalties with the addition of infringement notices for low level non-compliance with obligations to provide data, and enforceable compliance notices related to obligations to safeguard and appropriately use data.

The Cabinet papers and minutes are available on Stats NZ's website <https://www.stats.govt.nz/corporate/cabinet-papers-new-data-and-statistics-legislation-policy-proposals>

PCO are aiming to start drafting the Bill in July.

We look forward to continuing to work with you on this project.

Ngā mihi  
Beverley

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

Interim Manager – Legislative Policy | Kaiwhakahaere – Kaupapahere Ture

Data System Leadership | Kaiārahi Pūnaha Raraunga

Stats NZ Tatauranga Aotearoa

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## Ephraim Wilson

---

**From:** Eve Kennedy  
**Sent:** Wednesday, 3 June 2020 3:17 pm  
**To:** Beverley Braybrook  
**Subject:** RE: Data and Statistics Bill

Hi Beverley,

I will continue to be the contact for OPC.

Thanks

Eve

### Eve Kennedy, Policy Adviser

Office of the Privacy Commissioner Te Mana Matapono Matatapu

PO Box 10094, The Terrace, Wellington 6143

Level 8, 109 Featherston Street, Wellington, New Zealand

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---

**From:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>

**Sent:** Monday, 1 June 2020 9:24 pm

**To:** Kate.Hamilton@acc.co.nz; Anne.Harland@mbie.govt.nz; anna.cook@customs.govt.nz;  
Peter.Salter001@msd.govt.nz; Vaughan.Dodd001@msd.govt.nz; Grant.Guillosson@sia.govt.nz;  
Martin.Neylan@ird.govt.nz; ewright@doc.govt.nz; peter.johnston@corrections.govt.nz;  
Victoria.Croucher@dia.govt.nz; jason.raven@dpmc.govt.nz; Jonno.Ingerson@hud.govt.nz; KGendall@linz.govt.nz;  
alana.corney@mpi.govt.nz; Dan Elder <[dan.elder@mfe.govt.nz](mailto:dan.elder@mfe.govt.nz)>; David.Sanders@education.govt.nz;  
james.messent@mfat.govt.nz; Oliver.Poppelwell@health.govt.nz; Claire.Ashcroft@justice.govt.nz;  
Ana.Koloto@mpp.govt.nz; Deb.Potter@women.govt.nz; Kristina.Temel@elections.govt.nz;  
Adriana.Nickless@police.govt.nz; Ann.Walker@ot.govt.nz; Margaret.Mabbett@ssc.govt.nz;  
amy.russell@treasury.govt.nz; Wendy.bennett@ncsc.govt.nz; Matt.Haigh@rbnz.govt.nz;  
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<[Eve.Kennedy@privacy.org.nz](mailto:Eve.Kennedy@privacy.org.nz)>; Sam.Sargeant@gcsb.govt.nz; bishd@tpk.govt.nz

**Cc:** Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>

**Subject:** Data and Statistics Bill

Kia ora koutou



We have been progressing work on the Data and Statistics Bill. We will be engaging with agencies soon on:

- proposed amendments to agency-specific legislation to ensure consistency with policy for the Bill; and
- to get your feedback as work progresses on the draft Bill.

**Can you please advise by Friday 5 June whether you or another person will be the contact for your agency?**

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- require government agencies to follow statistical best practice, including those practices defined, laid down or promoted by the GS
- clarify that the obligation to provide information for official statistics applies whenever a mandatory data request is made (not just when in the form of a survey)
- provide statutory authority for other government agencies to collect data on behalf of the GS for statistical purposes
- continue to require the GS to undertake a Census every five years, with requirements for consultation before, and a review following, each Census
- include safeguards for sharing, integrating and accessing data for research and analysis, with new requirements for transparency
- modernise and update offences and penalties with the addition of infringement notices for low level non-compliance with obligations to provide data, and enforceable compliance notices related to obligations to safeguard and appropriately use data.

The Cabinet papers and minutes are available on Stats NZ's website <https://www.stats.govt.nz/corporate/cabinet-papers-new-data-and-statistics-legislation-policy-proposals>

PCO are aiming to start drafting the Bill in July.

We look forward to continuing to work with you on this project.

Ngā mihi  
Beverley

**Beverley Braybrook** (pronouns: she/her/hers)  
Interim Manager – Legislative Policy | Kaiwhakahaere – Kaupapahere Ture  
Data System Leadership | Kaiārahi Pūnaha Raraunga  
Stats NZ Tatauranga Aotearoa  
DDI [REDACTED] | [stats.govt.nz](https://www.stats.govt.nz)

# Unleashing

the power of data to change lives



## Ephraim Wilson

---

**From:** David Fraser <David.Fraser1@stats.govt.nz>  
**Sent:** Monday, 7 September 2020 12:52 pm  
**To:** Ewan Lincoln  
**Cc:** Victoria Hinson; Beverley Braybrook; Michael Harrison; Joanna Hayward  
**Subject:** RE: Data and Statistics Bill - international access to data held by Stats NZ

Hi Ewan,

Thank you for the response you provide to our queries and the additional information about IPP12. We're interested in making sure what we propose aligns with IPP 12, so thank you in particular for your note and for the blog on the model contract clauses.

In terms of meeting with you to discuss your experience with the Privacy Bill, we're happy to forego meeting with you at this stage as what you've said covers things off well.

When we are ready to take documents to MoJ and MFAT for consultation we think it would be really valuable to consult the OPC too. Perhaps that would be a good time to come and meet with you.

Thank you again for all your help thus far and we will keep you in the loop as this work progresses.

Regards

Dave

**Dave Fraser**  
Policy Advisor – Statistics Legislative Review  
Stats NZ Tatauranga Aotearoa  
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## Unleashing

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**From:** Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>  
**Sent:** Tuesday, 1 September 2020 5:10 PM  
**To:** David Fraser <David.Fraser1@stats.govt.nz>  
**Cc:** Victoria Hinson <Victoria.Hinson@stats.govt.nz>; Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>; Michael Harrison <Michael.Harrison@privacy.org.nz>; Joanna Hayward <Joanna.Hayward@privacy.org.nz>  
**Subject:** RE: Data and Statistics Bill - international access to data held by Stats NZ

Hi Dave

Thanks for clarifying what you are looking for from OPC.

On new privacy principle 12, which deals with cross-border disclosures of personal information, I'll just note that it will apply to disclosures made in reliance on the exception to principle 11 dealing with disclosures for statistical or research purposes (principle 11(1)(h)(ii) in the Privacy Act 2020).

Re your question about OPC's experience of strengthening the extraterritorial elements in the new Privacy Act, you're obviously familiar with the points we made in our submission on the Bill. An important consideration was the Supreme Court decision in *Poynter v Commerce Commission*, which affirmed the principle that an Act does not have extraterritorial effect unless that effect is clearly indicated in the legislation.

The Ministry of Justice led the work on the Privacy Bill, and involved MFAT as required. You may find it useful to look at MoJ's departmental report on the Privacy Bill, part 1, which deals with the cross-border issues: [https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCJU\\_ADV\\_77618\\_JU65196/ministry-of-justice-departmental-report-part-one](https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCJU_ADV_77618_JU65196/ministry-of-justice-departmental-report-part-one). I understand that MoJ received specific legal advice on extraterritorial issues. Let me know if you'd like a contact at MoJ for its work on the Privacy Bill.

You may also be interested in one particular way in which OPC will be helping to give effect to the new cross-border privacy principle. We have commissioned Chapman Tripp to draft model contract clauses which organisations disclosing personal information outside New Zealand can use to ensure such information is subject to comparable privacy protections to those under New Zealand law: <https://privacy.org.nz/blog/privacy-2-0-model-contract-clauses/>. This relates to new privacy principle 12(1)(f), which allows personal information to be disclosed overseas if it is subject to comparable safeguards, for example through an agreement between the disclosing and receiving entity. I don't know whether this is at all applicable to the issue you are looking at, but I thought I'd mention it.

We would be happy to meet to discuss this matter further with you, though we may not be able to tell you much more than is in this email.

Regards

Ewan

**Ewan Lincoln**

Senior Policy Adviser | Kaitohutohu Matua

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Hi Ewan,

Thanks for your email.

It's more related to the latter point about including provisions in the Data and Statistics Bill that would more clearly enable parts of the new bill to apply to overseas-based researchers and analysts seeking to access data held by Stats NZ. We haven't thought about whether what we wanted to do would override the Privacy Act, but I'm sure we can talk about that too.

We are most interested in learning about the Office of the Privacy Commissioner's experience in helping to clarify and strengthen the extraterritorial elements in the new Privacy Act. We note that OPC's submission on the bill at select committee recommended clarifying the Act's application to overseas agencies/activities. So we would be interested in hearing more about how your organisation went about engaging the key agencies (i.e. MFaT and MoJ) on this matter whether they had concerns and, if so, how they were addressed. We thought that given your organisation has been through this process relatively recently we wanted to sit down and have a chat before we begin the process of formal consultation.

Thanks

Dave

**Dave Fraser**  
Policy Advisor – Statistics Legislative Review  
Stats NZ Tatauranga Aotearoa  
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## Unleashing

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---

**From:** Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>

**Sent:** Friday, 28 August 2020 9:34 AM

**To:** David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>

**Cc:** Eve Kennedy <[Eve.Kennedy@privacy.org.nz](mailto:Eve.Kennedy@privacy.org.nz)>; Victoria Hinson <[Victoria.Hinson@stats.govt.nz](mailto:Victoria.Hinson@stats.govt.nz)>; Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>

**Subject:** FW: Data and Statistics Bill - international access to data held by Stats NZ

Hi David

Just a quick message to assure you that you will be getting a response from OPC to the issue raised below.

Can I just check that you are not asking about how the new cross-border principle in the Privacy Act 2020 would apply to access to data by overseas-based researchers and analysts. Rather, you would be looking to include provisions in the Data and Statistics Bill relating to cross-border access, and you would anticipate that these would override the Privacy Act. Is that right?

Thanks

Ewan

**Ewan Lincoln**

Senior Policy Adviser | Kaitohutohu Matua

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**From:** David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>

**Sent:** Thursday, 13 August 2020 1:27 pm

**To:** Eve Kennedy <[Eve.Kennedy@privacy.org.nz](mailto:Eve.Kennedy@privacy.org.nz)>

**Cc:** Victoria Hinson <[Victoria.Hinson@stats.govt.nz](mailto:Victoria.Hinson@stats.govt.nz)>; Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>

**Subject:** Data and Statistics Bill - international access to data held by Stats NZ

Kia Ora Eve,

As you're aware, the Legislative Policy Team at Stats NZ is currently working on a new Data and Statistics Bill to repeal and replace the Statistics Act 1975.

One of the current issues we are dealing with is access to data by overseas-based researchers and analysts. The Statistics Act 1975 does not clearly authorise overseas access to de-identified data (including integrated microdata) for research and analysis nor do the associated safeguards and protections apply, though workarounds have been developed for Stats NZ to permit said access and apply the safeguards (though they are inefficient and are probably an impediment to more research being undertaken by international researchers). Our current thinking is that the best way to address the issue is for certain parts of the new bill to expressly provide for international access to data for research and analysis under the modernised access framework (alongside obligations and associated sanctions).

We note that the Office of the Privacy Commissioner was involved in strengthening/clarifying the extraterritorial elements of the Privacy Act 2020. We were wondering if you were interested in having a chat with us about how you went about formulating the policy and any issues or concerns that key agencies such as MFaT and Justice may have had – we think it might be very useful as we go about creating something that will work in Data and Statistics context.

Ngā mihi

Dave

**Dave Fraser**

Policy Advisor – Statistics Legislative Review

Stats NZ Tatauranga Aotearoa

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# Unleashing

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## Ephraim Wilson

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**From:** Eve Kennedy  
**Sent:** Tuesday, 23 February 2021 1:46 pm  
**To:** Nienke van Dijken; Ewan Lincoln; Peter Mee  
**Subject:** FW: Draft Cabinet Paper for agency consultation - Data and Statistics Legislation: Supplementary policy proposals  
**Attachments:** Draft Cabinet Paper - Data and Statistics Legislation Supplementary policy proposals (Agency Consultation) (1).docx

I can see Ewan is on this list but not sure about you other two (my eyes are glazing over at the list) – so forwarding just in case.

**Eve Kennedy, Senior Policy Adviser (Health)** (she/her)  
**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu  
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**From:** David Fraser <David.Fraser1@stats.govt.nz>  
**Sent:** Tuesday, 23 February 2021 1:20 pm  
**To:** 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; 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 <tony.waldegrave@mbie.govt.nz>; 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.Blakeley005@msd.govt.nz; Pennie.Pearce002@msd.govt.nz; Steven.Sue003@msd.govt.nz; Peter Salter <peter.salter001@msd.govt.nz>; Lena.Sapunova002@msd.govt.nz; Michelle.Bly001@msd.govt.nz; Rob Hodgson <Rob.Hodgson009@MSD.govt.nz>; Vaughan.Dodd001@msd.govt.nz; odi@msd.govt.nz; alistair.mason@swa.govt.nz; Martin.Neylan@ird.govt.nz; Doug Lambert <doug.lambert@ird.govt.nz>; Tina MacLean <tina.maclean@ird.govt.nz>; Echo.Brooke-White@ird.govt.nz; Kirsten.Dale@ird.govt.nz; Susanna.Berry@ird.govt.nz; iwestbrooke@doc.govt.nz; 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.cooke@dia.govt.nz>; andrew.d.henderson@dia.govt.nz; Joanne Koreman <joanne.koreman@dia.govt.nz>; Antony Moss <antony.moss@dia.govt.nz>; amy.white@dia.govt.nz; andrei.zubkov@dia.govt.nz; Jonathon.Arrell@dia.govt.nz; Julia.Taylor@dia.govt.nz; Scott.Wilson@dia.govt.nz; jason.raven@dpmc.govt.nz; Jonno Ingerson <jonno.ingerson@hud.govt.nz>; Adam Brown <adam.brown@hud.govt.nz>; wterry@linz.govt.nz; KGendall@linz.govt.nz; Ruth Fischer-Smith <rfischer-smith@linz.govt.nz>; TJanssen@linz.govt.nz; alana.corney@mpi.govt.nz; Wido.vanLijf@mpi.govt.nz; Dan Elder <dan.elder@mfe.govt.nz>; Laura.Harding@mfe.govt.nz; cindy.obrien@education.govt.nz; David.Sanders@education.govt.nz;



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

**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
- 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.

Ngā mihi nui,

Dave

**Dave Fraser**

Senior Policy Advisor – Legislative Policy

Data System Leadership

Stats NZ Tatauranga Aotearoa

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# Unleashing

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## Ephraim Wilson

---

**From:** Peter Mee  
**Sent:** Thursday, 25 February 2021 3:14 pm  
**To:** Gareth McGuinness  
**Cc:** Beverley Braybrook; Janet Girvan; Marie Weavers; Beth Le Roux; Nienke van Dijken; Ewan Lincoln; Craig Armitage; David Fraser; Emmett Geoghegan; Lindy Siegert; Kira Oldfield; Craig Armitage; Joanna Hayward; Janet Dick; Justin Kim  
**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Hi Gareth,

Thanks for your email and the Gantt chart – we note your comments about this being a working timeline.

We really appreciate you providing us the opportunity of reviewing a well-advanced version of the Bill. The timeframe of three weeks from 12 March for the Bill review looks more doable for us, and we would certainly still benefit from direct discussions on the key issues in the Bill and those items that might yet be revised/added.

And yes, we are on track for comments on the 2nd order Cabinet paper by 2 March.

Thanks again for accommodating us in your schedule.

Cheers,

**Peter Mee (he/him)**

Manager, Policy

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

**From:** Gareth McGuinness <Gareth.McGuinness@stats.govt.nz>  
**Sent:** Thursday, 25 February 2021 2:14 pm  
**To:** Peter Mee <Peter.Mee@privacy.org.nz>  
**Cc:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>; Janet Girvan <Janet.Girvan@stats.govt.nz>; Marie Weavers <Marie.Weavers@stats.govt.nz>; Beth Le Roux <Beth.LeRoux@stats.govt.nz>; Nienke van Dijken <Nienke.vanDijken@privacy.org.nz>; Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>; Craig Armitage <craig.armitage@stats.govt.nz>; David Fraser <David.Fraser1@stats.govt.nz>; Emmett Geoghegan <emmett.geoghegan@stats.govt.nz>; Lindy Siegert <Lindy.Siegert@stats.govt.nz>; Kira Oldfield <Kira.Oldfield@stats.govt.nz>; Craig Armitage <Craig.Armitage@hotmail.com>; Joanna Hayward <Joanna.Hayward@privacy.org.nz>  
**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Kia ora Peter

Thank you for outlining what would be helpful to facilitate your review of the Data and Statistics Bill.

I have attached a somewhat more detailed timeline, but please note that this is a working timeline that changes on a regular basis. As such, we would appreciate you using it for your own information and not circulating it beyond your team.

You also should have received on Tuesday the draft 2nd order Cabinet paper for consultation.

Regarding the window for your review of the draft Bill, we could provide you with a well-advanced but not fully complete version of the draft Bill ahead of the general consultation with other agencies. We would indicate the few items likely be revised in or added to the version for agency consultation. We would aim to provide this to you during the week ending 12 March, allowing at least two weeks additional time for your review and any resulting discussion between our teams.

If this sounds like a useful approach, please let us know and we will proceed accordingly. Otherwise, we would be very happy to hear of other possible ways to help.

Ngā mihi  
Gareth

---

**From:** Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>  
**Sent:** Monday, 22 February 2021 3:07 pm  
**To:** Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>  
**Cc:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>; Janet Girvan <[Janet.Girvan@stats.govt.nz](mailto:Janet.Girvan@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>; Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Craig Armitage <[craig.armitage@stats.govt.nz](mailto:craig.armitage@stats.govt.nz)>; David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Lindy Siegert <[Lindy.Siegert@stats.govt.nz](mailto:Lindy.Siegert@stats.govt.nz)>; Kira Oldfield <[Kira.Oldfield@stats.govt.nz](mailto:Kira.Oldfield@stats.govt.nz)>; Craig Armitage <[Craig.Armitage@hotmail.com](mailto:Craig.Armitage@hotmail.com)>; Joanna Hayward <[Joanna.Hayward@privacy.org.nz](mailto:Joanna.Hayward@privacy.org.nz)>  
**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Hi Gareth,

Thanks for your prompt follow-up email. This timeframe is really useful, and looking forward to seeing the more detailed milestones/timeframes. We certainly understand the sensitivity of these.

One point to raise at this stage: the one week timeframe for reviewing the full Data & Statistics Bill looks a bit tight for us. We really appreciate the offer of pre-meetings on areas of potential concern (and will take these up!), but for us to carry out full due diligence on the Bill, I expect we would need a bit more time.

I'm not sure PCO's drafting strategy for the Bill, but if they intend to provide drafting to you section by section, then it would be helpful for us to review these as they come through - this might help us win a few days back! Happy to discuss other options for us to get across the Bill in a timely way, so you can still meet your timeframes for introduction.

We are excited to work together on the next stage of the Bill, and are sharpening pencils in anticipation of the Cabinet paper tomorrow!

Happy to discuss any of the above – feel free to give me a call.

Cheers,

**Peter Mee (he/him)**

Manager, Policy

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu  
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**From:** Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>  
**Sent:** Friday, 19 February 2021 5:15 pm  
**To:** Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Craig Armitage <[craig.armitage@stats.govt.nz](mailto:craig.armitage@stats.govt.nz)>; David Fraser

<[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Lindy Siegert <[Lindy.Siegert@stats.govt.nz](mailto:Lindy.Siegert@stats.govt.nz)>; Kira Oldfield <[Kira.Oldfield@stats.govt.nz](mailto:Kira.Oldfield@stats.govt.nz)>; Craig Armitage <[Craig.Armitage@hotmail.com](mailto:Craig.Armitage@hotmail.com)>

**Cc:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>; Janet Girvan <[Janet.Girvan@stats.govt.nz](mailto:Janet.Girvan@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>

**Subject:** Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Kia ora koutou

Thank you all for participating in a highly constructive meeting this afternoon.

We agreed to continue our collaboration in the following ways:

- Early next week, Stats NZ to share with OPC milestones/timelines of legislative work
- On or about Tue 23 Feb, Stats NZ send OPC the agency consultation draft of the 2<sup>nd</sup> order Cabinet Paper: response timeframe: approx. 1 week
- Late March/early April, one to two weeks ahead of agency consultation on the draft Bill, Stats NZ to share with OPC any areas of potential concern related to privacy in the draft bill, for Stats/OPC discussion
- Early/mid April, Stats NZ send OPC the agency consultation draft of the Data and Statistics Bill: response timeframe: approx. 1 week
- Further out, opportunities to collaborate on communicating the privacy implications of the new legislation

As noted in the meeting, timeframes are highly sensitive to changing legislative and other priorities, so any dates indicated are our estimates for your information.

Please let me know if I have left anything out.

Ngā mihi  
Gareth

**Gareth McGuinness** (pronouns: he/him/his)  
Manager – Legislative Policy | Kaiwhakahaere – Kaupapahere Ture  
Data System Leadership | Kaiārahi Pūnaha Raraunga  
Stats NZ Tatauranga Aotearoa  
M [REDACTED] | [stats.govt.nz](http://stats.govt.nz)

# Unleashing

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## Ephraim Wilson

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**From:** Janet Dick  
**Sent:** Friday, 26 February 2021 1:03 pm  
**To:** Ewan Lincoln  
**Cc:** Justin Kim  
**Subject:** RE: draft feedback Stats legislation

Kia ora Ewen

I've had a look at Nienke's excellent draft memo, and broadly, I agree with her assessment.

My quick questions are:

- do we want to mention the proposal to remove barriers in other legislation (e.g. the Electoral Act) that limit Stats' access to administrative data? As this would be for the purposes of stats and research, I don't think we would have a problem with this in principle, but it would be an extension on their info gathering powers?
- in terms of safeguards, do we have any comments on their proposal to change to confidentiality commitments rather than statutory declarations of secrecy? Given these will be backed up by offences, the change doesn't seem very controversial but we could mention it? (I'm not sure how much detail is really required though.)

I then just have a general question about the extent to which this overrides the Privacy Act? This appears to have been something we have engaged with stats on in the past but it wasn't clear to me from this cab paper what we will have oversight over, and what we will not. Is it pretty much a fully carve out for the purposes of stats info? If so – perhaps we could go a little harder on the overseas researcher proposal and say that we will be confident that this will protect people's privacy *provided that* the framework reflects our IPP 12(1) and IPP 11(h)?

Apologies if any of these comments are a bit left field!

Thanks

Janet

---

**From:** Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>  
**Sent:** Friday, 26 February 2021 10:50 am  
**To:** Janet Dick <Janet.Dick@privacy.org.nz>; Justin Kim <Justin.Kim@privacy.org.nz>  
**Subject:** RE: draft feedback Stats legislation

Hello Legal friends – just checking if you've had a chance to look at Nienke's draft memo? It would be good to get this to John today.

Thanks

Ewan

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**From:** Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>  
**Sent:** Thursday, 25 February 2021 4:46 pm  
**To:** Janet Dick <[Janet.Dick@privacy.org.nz](mailto:Janet.Dick@privacy.org.nz)>; Justin Kim <[Justin.Kim@privacy.org.nz](mailto:Justin.Kim@privacy.org.nz)>  
**Cc:** Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>  
**Subject:** RE: draft feedback Stats legislation

Hello – could you please send your feedback to Ewan?



Thanks,

Nienke

---

**From:** Janet Dick <[Janet.Dick@privacy.org.nz](mailto:Janet.Dick@privacy.org.nz)>

**Sent:** Thursday, 25 February 2021 11:29 am

**To:** Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Justin Kim <[Justin.Kim@privacy.org.nz](mailto:Justin.Kim@privacy.org.nz)>

**Subject:** RE: draft feedback Stats legislation

Thanks Nienke. I'll take a look now before I head into my afternoon of meetings 😊

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**From:** Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>

**Sent:** Thursday, 25 February 2021 11:25 am

**To:** Justin Kim <[Justin.Kim@privacy.org.nz](mailto:Justin.Kim@privacy.org.nz)>; Janet Dick <[Janet.Dick@privacy.org.nz](mailto:Janet.Dick@privacy.org.nz)>

**Subject:** draft feedback Stats legislation

Hi Janet and Justin,

I've drafted the attached feedback on the cabinet paper on the Stats legislation.

Could you please have a look and let me know if you have anything to add or if you would like to see any changes?

Don't want to put too much pressure on you, but it would be great if you could have a look at it today so I can get it a final version to Peter (and Ewan) before I go on leave at the end of the day.

Ewan will send the final version on to John and will make sure to get the final version to Stats NZ next week.

Thanks!

Nienke

Kia ora John,

This memo seeks your approval for our support of Stats NZ's Cabinet paper for the Data and Statistics Legislation: Supplementary policy proposals by Tuesday 2 March 2021. We consider the changes to be minor - the paper reports back on recommendations for offences and penalties (including infringement offences and compliance notices) and proposes amendments to other legislation to remove inadvertent barriers to providing information to Stats NZ. It also presents second-order policy proposals to ensure the overall intent of the package agreed to by Cabinet is given effect.

## **Background**

In July 2018, we provided positive feedback on draft public discussion document and Cabinet paper, clarifying issues related to interpretation of the Privacy Act interpretation (such as de-identification and use of unique identifiers) and we submitted on the public discussion document in November 2018. In January 2020, we provided comment on a suite of four papers seeking Cabinet policy agreement for the drafting of a Data and Statistics Bill to replace the Statistics Act 1975.

The comment we provided, was:

“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.”

## **Summary of proposals**

The current cabinet paper on supplementary policy proposals recommends the following:

- modernised or new offences and penalties in the Bill relating to:
  - the obligation on individuals and entities to provide information for the production of official statistics,
  - the obligation to protect information held or collected by the Government Statistician, and use it appropriately,
  - miscellaneous offences that are not associated with one or other of these obligations.
  
- legislative requirements needed to establish the:
  - infringement notice regime for low-level breaches of requirements to provide information for official statistics; and
  - enforceable compliance notice regime for low level breaches of obligations relating to accessing data for research purposes.
  
- a small number of supplementary proposals related to issues that have arisen during work to modernise legislative provisions, including:
  - replacing the requirement for persons to make a statutory declaration of secrecy with the requirement to complete a confidentiality commitment;
  - sharing data collected under a joint collection agreement;
  - modernising the transfer of Census records to Archives New Zealand;
  - amending references to Stats NZ products in other legislation; and

- clarifying the framework for access to data held by Stats NZ by overseas-based researchers and analysts.

### **OPC's position on the proposed recommendations**

We are pleased to see that the Bill will carry forward obligations to protect information held or collected by the Government Statistician and ensure it is used appropriately.

Our main interest is with the section on 'modernising joint collections provisions' and the section on 'clarifying the framework for access to data by overseas-based researchers and analysts'.

#### *Modernising joint collections provisions*

Section 9 of the Statistics Act 1975 provides a framework for the Government Statistician to enter into an agreement with a government department, local authority, or another statutory body to jointly collect and share information, subject to authorisation by the Minister of Statistics. Although information may be collected by either agency, where collected by the Government Statistician a person providing the information can opt out of having their information shared with the partner agency.

Stats NZ recommends the Bill:

- make it clear that data collected by the Government Statistician under an authorised joint collection agreement with another agency can only be disclosed to that partner agency for the purposes of producing official statistics and/or research and analysis; and
- remove the ability for a person to opt-out of having their data shared with the partner agency.

The rationale for this is that given the limitation on the purpose for which the data may be used, it is not necessary to retain the ability for respondents to opt-out of their information being shared with the partner agency. All information shared with the partner agency would be subject to protections including statistical confidentiality, and enforceable obligations to keep the data safe and use it appropriately. The Minister would continue to be required to authorise any joint collection agreement.

We feel confident that the safeguards and protections put in place will be sufficient to protect people's privacy.

#### *Clarifying the framework for access to data by overseas-based researchers and analysts*

Under the Statistics Act 1975, an approved researcher or analyst (including New Zealanders) may access Stats NZ-held data from an overseas location. However, this is not expressly provided for in, nor is it strictly prohibited by, the Act. The data itself is not sent overseas but is held onshore by Stats NZ. Overseas-based researchers and analysts access data through a secure portal, such as a data lab.

The Bill proposes that the Bill expressly enable the Government Statistician to approve overseas access under the principles-based framework for accessing data (already agreed to by Cabinet). It also proposes that the Government Statistician must also be satisfied that appropriate and broadly equivalent safeguards and protections are in place by undertaking an assessment of the specific overseas context related to the proposed research or analysis. A contractual arrangement between the Government Statistician and the researcher/analyst would enable enforcement of obligations.

We are confident that these safeguards and protections will protect people's privacy and that the framework is in line with the provisions in IPP12 (1) and IPP 11 (h).

**Conclusion**

Overall, we consider that the changes proposed in the paper are minor in nature and do not have privacy impacts. For this reason, we have no feedback to provide to Stats NZ on the paper and recommend a response supporting the cabinet paper.

Please let us know if you have any questions or concerns about the above changes.

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## Ephraim Wilson

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**From:** Ewan Lincoln  
**Sent:** Friday, 26 February 2021 3:01 pm  
**To:** John Edwards  
**Cc:** Nienke van Dijken; Peter Mee; Janet Dick  
**Subject:** Feedback cab paper Stats NZ - data and statistics legislation (A732750)  
**Attachments:** Feedback cab paper Stats NZ - data and statistics legislation (A732750).docm

Hi John

Attached is a memo seeking your agreement to indicate OPC's support for a Stats NZ Cabinet paper. The Cabinet paper deals with supplementary policy proposals for the Data and Statistics Bill.

Comment is due by close of play on **Tuesday 4 March**, so it would be good to get your views by noon on Tuesday. Happy to discuss.

Thanks

Ewan

# Memorandum

**To** : John Edwards  
**cc** : Peter Mee  
**From** : Ewan Lincoln / Nienke van Dijken  
**Date** : 26 February 2021  
**Subject** : **Feedback on Stats NZ draft Cabinet paper: data and statistics legislation, supplementary policy proposals**

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This memo seeks your approval for OPC to support Stats NZ's Cabinet paper 'Data and Statistics Legislation: Supplementary policy proposals'. Feedback on the draft paper is due by **Tuesday 2 March 2021**.

We consider the policy proposals in the paper to be minor. The paper reports back on recommendations for offences and penalties and proposes amendments to other legislation to remove barriers to providing information to Stats NZ. It also presents second-order policy proposals to give effect to the overall intent of the package agreed to by Cabinet.

## Background

In July 2018, OPC provided positive feedback on a draft public discussion document and Cabinet paper, clarifying issues related to Privacy Act interpretation (such as de-identification and use of unique identifiers). We also submitted on the public discussion document in November 2018. In January 2020, we provided comment on a suite of four papers seeking Cabinet policy agreement for the drafting of a Data and Statistics Bill to replace the Statistics Act 1975.

We provided the following comment on the Cabinet papers: "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."

## Summary of proposals

The current Cabinet paper on supplementary policy proposals recommends:

- modernised or new offences and penalties in the Bill relating to:
  - the obligation on individuals and entities to provide information for the production of official statistics,
  - the obligation to protect information held or collected by the Government Statistician, and to use it appropriately, and
  - miscellaneous offences that are not associated with one or other of these obligations;

- legislative requirements needed to establish the:
  - infringement notice regime for low-level breaches of requirements to provide information for official statistics, and
  - enforceable compliance notice regime for low-level breaches of obligations relating to accessing data for research purposes;
- a small number of supplementary proposals related to issues that have arisen during work to modernise legislative provisions, including:
  - replacing the requirement for persons to make a statutory declaration of secrecy with the requirement to complete a confidentiality commitment,
  - sharing data collected under a joint collection agreement,
  - modernising the transfer of Census records to Archives New Zealand,
  - amending references to Stats NZ products in other legislation, and
  - clarifying the framework for access to data held by Stats NZ by overseas-based researchers and analysts.

### **OPC's position on the proposed recommendations**

We are pleased to see that the Bill will carry forward obligations to protect information held or collected by the Government Statistician and ensure it is used appropriately. The modernised offences and penalties will also help to protect privacy. Some of the offences relate to intentionally re-identifying individuals and publishing information without taking reasonable steps to ensure individuals are not identifiable.

Our main interest is in the sections on 'modernising joint collections provisions' and 'clarifying the framework for access to data by overseas-based researchers and analysts'.

#### *Modernising joint collections provisions*

Section 9 of the Statistics Act 1975 provides a framework for the Government Statistician to enter into an agreement with a government department, local authority or another statutory body to jointly collect and share information, subject to authorisation by the Minister of Statistics. Although information may be collected by either agency, where collected by the Government Statistician a person providing the information can opt out of having their information shared with the partner agency.

Stats NZ recommends the Bill:

- make it clear that data collected by the Government Statistician under an authorised joint collection agreement with another agency can only be disclosed to that partner agency for the purposes of producing official statistics and/or research and analysis; and
- remove the ability for a person to opt out of having their data shared with the partner agency.

The rationale for this change is that, given the limitation on the purpose for which the data may be used, it is not necessary to retain the ability for respondents to opt out of their information being shared with the partner agency. All information shared with the partner agency would be subject to protections, including statistical confidentiality and enforceable obligations to keep the data safe and use it appropriately. The Minister would continue to be required to authorise any joint collection agreement.

These safeguards and protections appear sufficient to protect people's privacy.



*Clarifying the framework for access to data by overseas-based researchers and analysts*

Under the Statistics Act 1975, an approved researcher or analyst (including New Zealanders) may access Stats NZ-held data from an overseas location. However, this is not expressly provided for in, nor is it strictly prohibited by, the Act. The data itself is not sent overseas but is held onshore by Stats NZ. Overseas-based researchers and analysts access data through a secure portal, such as a data lab.

The paper proposes that the Bill expressly enable the Government Statistician to approve overseas access under the principles-based framework for accessing data (already agreed to by Cabinet). It proposes that the Government Statistician must be satisfied that appropriate and broadly equivalent safeguards and protections are in place by undertaking an assessment of the specific overseas context related to the proposed research or analysis. A contractual arrangement between the Government Statistician and the researcher/analyst would enable enforcement of obligations.

These safeguards and protections appear adequate to protect people's privacy, and the framework seems to be in line with the provisions in IPP12(1) and IPP 11(1)(h). We will be able to scrutinise these safeguards further when we see the draft Bill.

**Conclusion and next steps**

Overall, we consider that the changes proposed in the paper are minor in nature and do not have privacy impacts. For this reason, we have no feedback to provide to Stats NZ on the paper and recommend a response supporting the Cabinet paper.

Stats NZ has advised that it will aim to provide OPC with a well-advanced but not fully complete version of the draft Bill in the week ending 12 March and will highlight issues of potential interest related to privacy in the draft Bill. We will brief you further at that time.

## Ephraim Wilson

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**From:** Ewan Lincoln  
**Sent:** Monday, 1 March 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

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu  
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**To:** 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; 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 <tony.waldegrave@mbie.govt.nz>; 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.Blakeley005@msd.govt.nz; Pennie.Pearce002@msd.govt.nz; Steven.Sue003@msd.govt.nz; Peter Salter <peter.salter001@msd.govt.nz>; Lena.Sapunova002@msd.govt.nz; Michelle.Bly001@msd.govt.nz; Rob Hodgson <Rob.Hodgson009@MSD.govt.nz>; Vaughan.Dodd001@msd.govt.nz; odi@msd.govt.nz; alistair.mason@swa.govt.nz; Martin.Neylan@ird.govt.nz; Doug Lambert <doug.lambert@ird.govt.nz>; Tina MacLean <tina.maclean@ird.govt.nz>; Echo.Brooke-White@ird.govt.nz; Kirsten.Dale@ird.govt.nz; Susanna.Berry@ird.govt.nz; iwestbrooke@doc.govt.nz; 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.cooke@dia.govt.nz>; andrew.d.henderson@dia.govt.nz; Joanne Koreman <joanne.koreman@dia.govt.nz>; Antony Moss <antony.moss@dia.govt.nz>; amy.white@dia.govt.nz; andrei.zubkov@dia.govt.nz; Jonathon.Arrell@dia.govt.nz; Julia.Taylor@dia.govt.nz; Scott.Wilson@dia.govt.nz; jason.raven@dpmc.govt.nz; Jonno Ingerson <jonno.ingerson@hud.govt.nz>; Adam Brown <adam.brown@hud.govt.nz>; wterry@linz.govt.nz; KGendall@linz.govt.nz; Ruth Fischer-Smith <rfischer-smith@linz.govt.nz>; TJanssen@linz.govt.nz; alana.corney@mpi.govt.nz; Wido.vanLijf@mpi.govt.nz; Dan Elder <dan.elder@mfe.govt.nz>; Laura.Harding@mfe.govt.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.ramsay@education.govt.nz; ben.omeara@education.govt.nz; james.messent@mfat.govt.nz; Tracy.Parsons@mfat.govt.nz; Phil.Mellor@mfat.govt.nz; Sam.Verevis@mfat.govt.nz; kerryn.fowlie@mfat.govt.nz; dean.ford@mfat.govt.nz; Oliver.Poppelwell@health.govt.nz; Dean.rutherford@health.govt.nz; simon\_ross@moh.govt.nz; Maree\_Roberts@moh.govt.nz; 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; Adriana.Nickless@police.govt.nz; tanya.roth@police.govt.nz; Ann.Walker@ot.govt.nz; Vasantha Krishnan <Vasantha.krishnan@ot.govt.nz>; laura.miller@ot.govt.nz; caitlin.parr@ot.govt.nz; daniel.miles@ot.govt.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.Badenhorst@treasury.govt.nz; ben.creet@ncsc.govt.nz; Wendy.bennett@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; Papers2review@tearawhiti.govt.nz; Pauline.Courtney@crownlaw.govt.nz; Eve Kennedy <Eve.Kennedy@privacy.org.nz>; Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>; Michael Harrison <Michael.Harrison@privacy.org.nz>; Sam.Sargeant@gcsb.govt.nz; nadia.ward@tpk.govt.nz; Darin Bishop <bishd@tpk.govt.nz>

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

**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
- 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.

Ngā mihi nui,

Dave

**Dave Fraser**

Senior Policy Advisor – Legislative Policy

Data System Leadership

Stats NZ Tatauranga Aotearoa

DDI [REDACTED] | [stats.govt.nz](https://stats.govt.nz)

# Unleashing

the power of data to change lives



## Ephraim Wilson

---

**From:** David Fraser <David.Fraser1@stats.govt.nz>  
**Sent:** Monday, 1 March 2021 4:42 pm  
**To:** Ewan Lincoln  
**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 Ewan,

Thank you for your comments.

I will leave it to Gareth to liaise with you regarding the advanced draft of the Bill.

Ngā mihi nui,

Dave

**Dave Fraser**  
Senior Policy Advisor – Legislative Policy  
Data System Leadership  
Stats NZ Tatauranga Aotearoa  
DDI [REDACTED] | [stats.govt.nz](https://stats.govt.nz)

## Unleashing

the power of data to change lives



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**From:** Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>  
**Sent:** Monday, 1 March 2021 3:38 PM  
**To:** David Fraser <David.Fraser1@stats.govt.nz>  
**Cc:** Gareth McGuinness <Gareth.McGuinness@stats.govt.nz>; Beth Le Roux <Beth.LeRoux@stats.govt.nz>; Eleisha Hawkins <eleisha.hawkins@stats.govt.nz>; Craig Jones <Craig.Jones@stats.govt.nz>; Peter Mee <Peter.Mee@privacy.org.nz>; Nienke van Dijken <Nienke.vanDijken@privacy.org.nz>  
**Subject:** RE: Draft Cabinet Paper for agency consultation - Data and Statistics Legislation: Supplementary policy proposals

Kia ora Dave

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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

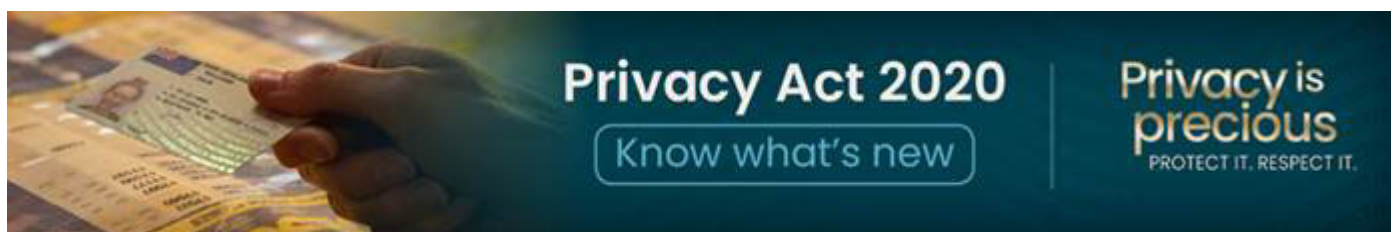
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**Cc:** Gareth McGuinness <Gareth.McGuinness@stats.govt.nz>; Beth Le Roux <Beth.LeRoux@stats.govt.nz>; Eleisha Hawkins <eleisha.hawkins@stats.govt.nz>; Craig Jones <Craig.Jones@stats.govt.nz>

**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
- 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.

Ngā mihi nui,

Dave

**Dave Fraser**

Senior Policy Advisor – Legislative Policy

Data System Leadership

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# Unleashing

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## Ephraim Wilson

---

**From:** David Fraser <David.Fraser1@stats.govt.nz>  
**Sent:** Friday, 12 March 2021 12:08 pm  
**To:** Ewan Lincoln  
**Cc:** Gareth McGuinness; Peter Mee; Nienke van Dijken  
**Subject:** RE: Draft Cabinet Paper for agency consultation - Data and Statistics Legislation: Supplementary policy proposals  
**Attachments:** Draft Cabinet Paper - Data and Statistics Legislation Supplementary policy proposals [Ministerial consultation] (2).docx

Kia Ora Koutou,

Thank you for your comments on the draft Cabinet Paper (see attached for the latest version). Below is our response to your feedback.

### **Providing for Te Tiriti o Waitangi, and Māori interests in data**

- A number of agencies raised questions about whether or how the bill would give effect to Te Tiriti o Waitangi and Māori rights and interests in data in respect of compliance, offences and penalties, obligations to provide data for official statistics, and access to data by overseas-based researchers and analysts.
- Cabinet agreed that a purpose of the new Act will be to recognise and respect the Crown's responsibility to consider and provide for Māori interests in statistics and the data used for statistical purposes and for research and analysis, including by providing opportunities for:
  - Partnering and early and meaningful engagement with Māori including to inform decision making about data collection and use that impacts on Māori
  - Māori access to data by government, to further Māori economic, social and cultural wellbeing.
- Cabinet also agreed specific consultation requirements in relation to the multi-year data and statistical work programme and Census content and conduct.
- The new principles-based access framework for research and analysis reflects current best practice including [Ngā Tikanga Paihere](#)
- Including the Crown's responsibility in the purpose signalled an expectation that this responsibility should be reflected throughout the new Act and we are working with PCO on draft provisions to give effect to this. Kahui Legal is supporting us with this work and we are also engaging with the Data Iwi Leaders Group through the Mana Ōrite work programme between DILG and Stats NZ.

### **Offences and penalties, and enforcement and compliance**

- A number of agencies asked about criminal offences and infringements and the particular circumstances in which Stats NZ would decide to prosecute people for non-compliance. While this is not the subject of legislation, Stats NZ will continue to consider the particular context surrounding non-compliant behaviour as well as the Solicitor-General's Prosecution Guidelines when considering whether to commence a prosecution. We further note that compliance tools are just one part of a range of measure to support and encourage compliance. We have amended para 23 to reflect this.
- In response to comments about whether criminal offences are an appropriate sanction for a failure to provide information for official statistics, we have added an additional recommendation from a previous Cabinet Paper at para 15.1. To be clear, there are no offences related to providing information for research and analytic purposes (as there are no mandatory requirements to provide information for research and analysis).
- We will seek feedback from the Ministry of Justice on the final form of draft offences and penalties to ensure that they are appropriate and proportionate. (see para 63)
- In response to questions related to *mens rea* (the mental element involved in non-compliant behaviour) please note that we will continue to work with Parliamentary Counsel to ensure this is appropriately captured in each offence. Accidental non-compliance, for example, accidentally disclosing data about an individual or business, is prima facie not grounds for prosecuting a person.

- Regarding the offence for a failure to follow directions, we are clear that directions in this case are those issued in writing by the Government Statistician that relate to the specific research or analytical purpose for which access was granted – they are not advice and guidance given to researchers/ analysts by Stats NZ staff.
- We have changed references to “secrecy” (e.g. in the offences table and rec 6.1.3) to “confidentiality” to avoid unintentional references to the national information security classification of SECRET.
- We have more clearly worded the proposed offences relating to a person who receives data they’re not entitled to receive (Rec 6.6 and offences table) and for a person who destroys, mutilates etc. a request for information (Rec 6.5 and offences table)
- Regarding a failure to publish or release results from research and methodologies (para 27.2) used in research the Bill will make it clear that this would include a summary of results. The expectation is that researchers publish a summary of results, regardless of whether the results are positive or negative.
- Stats NZ will not publish a list of people who have received a compliance notice. The focus on the notice is on fixing issues, not publicly admonishing people for low-level breaches.

### **Removing barriers in other legislation**

- In response to queries, at paragraph 32 we have added in an example of one current legislative barrier to provide some context.
- We will be in touch directly with those agencies who have asked about specific amendments to legislation they administer.

### **Confidentiality commitment**

- The intention is for the confidentiality commitment process to be streamlined. A person should only ever have to make a commitment once (rather than multiple times as currently is the case).
- A confidentiality commitment will be legally enforceable (as is currently the case with the Statutory Declaration), and serious non-compliance could result in a person being charged with a criminal offence.

### **Joint collections**

- Paragraphs 40 and 43 have been reworded for clarity, following comments from agencies.
- The primary reason for removing the opt-out provision is to improve the quality of statistics and research produced by the agency. Because the data is being collected under the Data and Statistics Act, the partner agency will need to have a legal authority to collect that information.
- It’s envisaged that, because the safeguards and protections of the Data and Statistics Bill will apply when data is shared by Stats NZ with the partner agency, additional safeguards may apply if required (eg confidentiality commitments).
- Respondents will be informed that information is being collected under a joint collection.

### **Transfer of Census forms to Archives New Zealand**

- Paragraph 47 has been amended to more accurately capture the policy intent.

### **Clarifying the framework for access to data by overseas-based researchers and analysts**

- Some agencies asked whether additional measures are required (for example, the GS referring to other frameworks when considering the specific overseas context such as proposed regulations under the Privacy Act 2020 to whitelist certain jurisdictions as having equivalent laws to NZ or having a higher set of standards that international researchers should abide by).
  - In practice, the GS could and probably would consider any other relevant frameworks, such as those in the Privacy Act. However, it is not necessary to make this explicit in the legislation.
  - The Government Statistician will be able to set additional conditions depending on the specific proposed access under consideration. The principles-based framework also provides for flexibility in what access environment and the degree of modification to the data is appropriate.

Ministerial consultation on the attached paper has been scheduled to run between **Wednesday 17 March – Wednesday 24 March**. We are still aiming to make the DEV meeting of 7 April.

Ngā mihi nui

Dave

**Dave Fraser**  
Senior Policy Advisor – Legislative Policy  
Data System Leadership  
Stats NZ Tatauranga Aotearoa  
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# Unleashing

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---

**From:** Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>  
**Sent:** Monday, 1 March 2021 3:38 PM  
**To:** David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>  
**Cc:** Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>; Eleisha Hawkins <[eleisha.hawkins@stats.govt.nz](mailto:eleisha.hawkins@stats.govt.nz)>; Craig Jones <[Craig.Jones@stats.govt.nz](mailto:Craig.Jones@stats.govt.nz)>; Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>; Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>  
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**Cc:** Gareth McGuinness <Gareth.McGuinness@stats.govt.nz>; Beth Le Roux <Beth.LeRoux@stats.govt.nz>; Eleisha Hawkins <eleisha.hawkins@stats.govt.nz>; Craig Jones <Craig.Jones@stats.govt.nz>

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Dave

**Dave Fraser**

Senior Policy Advisor – Legislative Policy

Data System Leadership

Stats NZ Tatauranga Aotearoa

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# Unleashing

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## Ephraim Wilson

---

**From:** Peter Mee  
**Sent:** Thursday, 18 March 2021 8:10 am  
**To:** Nienke van Dijken; Ewan Lincoln  
**Subject:** FW: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill  
**Attachments:** Data and Statistics Bill-v11.0 to OPC.docx

Hi both – I'll let you take the lead on engage with Dave/Stats NZ on when to meet to discuss any issues. Let's discuss timeframes for response and when I can review our feedback – will take your advice.

Cheers,

### Peter Mee (he/him)

Manager, Policy

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu  
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**From:** David Fraser <David.Fraser1@stats.govt.nz>  
**Sent:** Monday, 15 March 2021 4:01 pm  
**To:** Peter Mee <Peter.Mee@privacy.org.nz>; Gareth McGuinness <Gareth.McGuinness@stats.govt.nz>  
**Cc:** Beverley Braybrook <Beverley.Braybrook@stats.govt.nz>; Janet Girvan <Janet.Girvan@stats.govt.nz>; Marie Weavers <Marie.Weavers@stats.govt.nz>; Beth Le Roux <Beth.LeRoux@stats.govt.nz>; Nienke van Dijken <Nienke.vanDijken@privacy.org.nz>; Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>; Craig Armitage <craig.armitage@stats.govt.nz>; Emmett Geoghegan <emmett.geoghegan@stats.govt.nz>; Lindy Siegert <Lindy.Siegert@stats.govt.nz>; Kira Oldfield <Kira.Oldfield@stats.govt.nz>; Craig Armitage <Craig.Armitage@hotmail.com>; Joanna Hayward <Joanna.Hayward@privacy.org.nz>; Janet Dick <Janet.Dick@privacy.org.nz>; Justin Kim <Justin.Kim@privacy.org.nz>  
**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Kia Ora Peter,

Please find attached the latest draft version of the Bill. The draft bill is being provided to you on an in-confidence basis and continues to be subject to legal professional privilege.

Legal disclaimer aside, here are a few points to note:

- The draft Bill does not contain Crown-Māori provisions yet. The drafting instructions on these points were provided to PCO only very recently. A first cut of these provisions is likely to come to you in mid-April;
- We've left the most recent set of our comments to PCO in the draft Bill, so you can see the ongoing discussion and context around particular provisions;
- Some parts of the Bill consist of relatively new drafting, for example, the clauses on statistical confidentiality and overseas access to data for research and analysis, and Part 6 (enforcement and other general provisions), and may need quite a lot of refinement;
- We're discussing internally and with PCO what the appropriate terminology/definitions should be regarding "person", "private sector agency" etc. We need to ensure requests for information for official statistics can continue to be made to for example individuals, businesses, NGOs, sole traders, charities, etc. The Statistics Act used the term "undertaking", which is defined very broadly. We are not keen on retaining this term;
- We received a first cut of Schedule 2 "Amendments to remove barriers to provision of information to Statistician", recently but it requires substantial reworking. We will send through this schedule when a better product arises, which is likely to be in mid-April.

Lastly, we would be very interested in arranging another meeting to talk through and answer any questions OPC may have about the drafting, ahead of any formal written response. Please let us know when may suit you to talk.

Ngā mihi nui,

Dave

**Dave Fraser**  
Senior Policy Advisor – Legislative Policy  
Data System Leadership  
Stats NZ Tatauranga Aotearoa  
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**From:** Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>  
**Sent:** Monday, 15 March 2021 8:58 AM  
**To:** David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>; Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>  
**Cc:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>; Janet Girvan <[Janet.Girvan@stats.govt.nz](mailto:Janet.Girvan@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>; Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Craig Armitage <[craig.armitage@stats.govt.nz](mailto:craig.armitage@stats.govt.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Lindy Siegert <[Lindy.Siegert@stats.govt.nz](mailto:Lindy.Siegert@stats.govt.nz)>; Kira Oldfield <[Kira.Oldfield@stats.govt.nz](mailto:Kira.Oldfield@stats.govt.nz)>; Craig Armitage <[Craig.Armitage@hotmail.com](mailto:Craig.Armitage@hotmail.com)>; Joanna Hayward <[Joanna.Hayward@privacy.org.nz](mailto:Joanna.Hayward@privacy.org.nz)>; Janet Dick <[Janet.Dick@privacy.org.nz](mailto:Janet.Dick@privacy.org.nz)>; Justin Kim <[Justin.Kim@privacy.org.nz](mailto:Justin.Kim@privacy.org.nz)>  
**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

That's great, thank you Dave.

Cheers,

**Peter Mee (he/him)**

Manager, Policy

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**From:** David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>  
**Sent:** Friday, 12 March 2021 5:03 pm  
**To:** Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>; Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>  
**Cc:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>; Janet Girvan <[Janet.Girvan@stats.govt.nz](mailto:Janet.Girvan@stats.govt.nz)>; Marie

Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>; Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Craig Armitage <[craig.armitage@stats.govt.nz](mailto:craig.armitage@stats.govt.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Lindy Siegert <[Lindy.Siegert@stats.govt.nz](mailto:Lindy.Siegert@stats.govt.nz)>; Kira Oldfield <[Kira.Oldfield@stats.govt.nz](mailto:Kira.Oldfield@stats.govt.nz)>; Craig Armitage <[Craig.Armitage@hotmail.com](mailto:Craig.Armitage@hotmail.com)>; Joanna Hayward <[Joanna.Hayward@privacy.org.nz](mailto:Joanna.Hayward@privacy.org.nz)>; Janet Dick <[Janet.Dick@privacy.org.nz](mailto:Janet.Dick@privacy.org.nz)>; Justin Kim <[Justin.Kim@privacy.org.nz](mailto:Justin.Kim@privacy.org.nz)>

**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Kia Ora Peter,

Thanks for your email. Gareth was in training all day today, but let me know that we just have to finalise a couple of process points before we send it through to you and your colleagues. We'll pick this up first thing Monday morning and ensure you get it early in the week.

FYI following a recent discussion with PCO, you will still have approximately three weeks before the version for agency consultation will be circulated.

Ngā mihi nui,

Dave

**Dave Fraser**

Senior Policy Advisor – Legislative Policy

Data System Leadership

Stats NZ Tatauranga Aotearoa

DDI [REDACTED] | [stats.govt.nz](mailto:stats.govt.nz)

## Unleashing

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**From:** Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>

**Sent:** Friday, 12 March 2021 1:01 PM

**To:** Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>

**Cc:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>; Janet Girvan <[Janet.Girvan@stats.govt.nz](mailto:Janet.Girvan@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>; Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Craig Armitage <[craig.armitage@stats.govt.nz](mailto:craig.armitage@stats.govt.nz)>; David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Lindy Siegert <[Lindy.Siegert@stats.govt.nz](mailto:Lindy.Siegert@stats.govt.nz)>; Kira Oldfield <[Kira.Oldfield@stats.govt.nz](mailto:Kira.Oldfield@stats.govt.nz)>; Craig Armitage <[Craig.Armitage@hotmail.com](mailto:Craig.Armitage@hotmail.com)>; Joanna Hayward <[Joanna.Hayward@privacy.org.nz](mailto:Joanna.Hayward@privacy.org.nz)>; Janet Dick <[Janet.Dick@privacy.org.nz](mailto:Janet.Dick@privacy.org.nz)>; Justin Kim <[Justin.Kim@privacy.org.nz](mailto:Justin.Kim@privacy.org.nz)>

**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Hi Gareth,

Just noting our previous discussions on timeframes and providing OPC an advance copy of the draft Bill, do you think you will still be able to get this to us this week? Assuming the timeframes and milestones for introducing the Bill into the House remain the same, we would appreciate seeing the Bill as soon as possible.

Cheers,

**Peter Mee (he/him)**

Manager, Policy

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**From:** Peter Mee

**Sent:** Thursday, 25 February 2021 3:14 pm

**To:** Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>

**Cc:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>; Janet Girvan <[Janet.Girvan@stats.govt.nz](mailto:Janet.Girvan@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>; Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Craig Armitage <[craig.armitage@stats.govt.nz](mailto:craig.armitage@stats.govt.nz)>; David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Lindy Siegert <[Lindy.Siegert@stats.govt.nz](mailto:Lindy.Siegert@stats.govt.nz)>; Kira Oldfield <[Kira.Oldfield@stats.govt.nz](mailto:Kira.Oldfield@stats.govt.nz)>; Craig Armitage <[Craig.Armitage@hotmail.com](mailto:Craig.Armitage@hotmail.com)>; Joanna Hayward <[Joanna.Hayward@privacy.org.nz](mailto:Joanna.Hayward@privacy.org.nz)>; Janet Dick <[Janet.Dick@privacy.org.nz](mailto:Janet.Dick@privacy.org.nz)>; Justin Kim <[Justin.Kim@privacy.org.nz](mailto:Justin.Kim@privacy.org.nz)>

**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Hi Gareth,

Thanks for your email and the Gantt chart – we note your comments about this being a working timeline.

We really appreciate you providing us the opportunity of reviewing a well-advanced version of the Bill. The timeframe of three weeks from 12 March for the Bill review looks more doable for us, and we would certainly still benefit from direct discussions on the key issues in the Bill and those items that might yet be revised/added.

And yes, we are on track for comments on the 2nd order Cabinet paper by 2 March.

Thanks again for accommodating us in your schedule.

Cheers,

**Peter Mee (he/him)**

Manager, Policy

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---

**From:** Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>

**Sent:** Thursday, 25 February 2021 2:14 pm

**To:** Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>

**Cc:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>; Janet Girvan <[Janet.Girvan@stats.govt.nz](mailto:Janet.Girvan@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>; Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Craig Armitage <[craig.armitage@stats.govt.nz](mailto:craig.armitage@stats.govt.nz)>; David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Lindy Siegert <[Lindy.Siegert@stats.govt.nz](mailto:Lindy.Siegert@stats.govt.nz)>; Kira Oldfield

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**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Kia ora Peter

Thank you for outlining what would be helpful to facilitate your review of the Data and Statistics Bill.

I have attached a somewhat more detailed timeline, but please note that this is a working timeline that changes on a regular basis. As such, we would appreciate you using it for your own information and not circulating it beyond your team.

You also should have received on Tuesday the draft 2nd order Cabinet paper for consultation.

Regarding the window for your review of the draft Bill, we could provide you with a well-advanced but not fully complete version of the draft Bill ahead of the general consultation with other agencies. We would indicate the few items likely be revised in or added to the version for agency consultation. We would aim to provide this to you during the week ending 12 March, allowing at least two weeks additional time for your review and any resulting discussion between our teams.

If this sounds like a useful approach, please let us know and we will proceed accordingly. Otherwise, we would be very happy to hear of other possible ways to help.

Ngā mihi  
Gareth

---

**From:** Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>

**Sent:** Monday, 22 February 2021 3:07 pm

**To:** Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>

**Cc:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>; Janet Girvan <[Janet.Girvan@stats.govt.nz](mailto:Janet.Girvan@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>; Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Craig Armitage <[craig.armitage@stats.govt.nz](mailto:craig.armitage@stats.govt.nz)>; David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Lindy Siegert <[Lindy.Siegert@stats.govt.nz](mailto:Lindy.Siegert@stats.govt.nz)>; Kira Oldfield <[Kira.Oldfield@stats.govt.nz](mailto:Kira.Oldfield@stats.govt.nz)>; Craig Armitage <[Craig.Armitage@hotmail.com](mailto:Craig.Armitage@hotmail.com)>; Joanna Hayward <[Joanna.Hayward@privacy.org.nz](mailto:Joanna.Hayward@privacy.org.nz)>

**Subject:** RE: Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Hi Gareth,

Thanks for your prompt follow-up email. This timeframe is really useful, and looking forward to seeing the more detailed milestones/timeframes. We certainly understand the sensitivity of these.

One point to raise at this stage: the one week timeframe for reviewing the full Data & Statistics Bill looks a bit tight for us. We really appreciate the offer of pre-meetings on areas of potential concern (and will take these up!), but for us to carry out full due diligence on the Bill, I expect we would need a bit more time.

I'm not sure PCO's drafting strategy for the Bill, but if they intend to provide drafting to you section by section, then it would be helpful for us to review these as they come through - this might help us win a few days back! Happy to discuss other options for us to get across the Bill in a timely way, so you can still meet your timeframes for introduction.

We are excited to work together on the next stage of the Bill, and are sharpening pencils in anticipation of the Cabinet paper tomorrow!

Happy to discuss any of the above – feel free to give me a call.

Cheers,

**Peter Mee (he/him)**

Manager, Policy

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**From:** Gareth McGuinness <[Gareth.McGuinness@stats.govt.nz](mailto:Gareth.McGuinness@stats.govt.nz)>

**Sent:** Friday, 19 February 2021 5:15 pm

**To:** Nienke van Dijken <[Nienke.vanDijken@privacy.org.nz](mailto:Nienke.vanDijken@privacy.org.nz)>; Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Craig Armitage <[craig.armitage@stats.govt.nz](mailto:craig.armitage@stats.govt.nz)>; David Fraser <[David.Fraser1@stats.govt.nz](mailto:David.Fraser1@stats.govt.nz)>; Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Lindy Siegert <[Lindy.Siegert@stats.govt.nz](mailto:Lindy.Siegert@stats.govt.nz)>; Kira Oldfield <[Kira.Oldfield@stats.govt.nz](mailto:Kira.Oldfield@stats.govt.nz)>; Craig Armitage <[Craig.Armitage@hotmail.com](mailto:Craig.Armitage@hotmail.com)>

**Cc:** Beverley Braybrook <[Beverley.Braybrook@stats.govt.nz](mailto:Beverley.Braybrook@stats.govt.nz)>; Janet Girvan <[Janet.Girvan@stats.govt.nz](mailto:Janet.Girvan@stats.govt.nz)>; Marie Weavers <[Marie.Weavers@stats.govt.nz](mailto:Marie.Weavers@stats.govt.nz)>; Beth Le Roux <[Beth.LeRoux@stats.govt.nz](mailto:Beth.LeRoux@stats.govt.nz)>

**Subject:** Outcome Stats NZ/Office of the Privacy Commissioner re Data and Statistics Bill

Kia ora koutou

Thank you all for participating in a highly constructive meeting this afternoon.

We agreed to continue our collaboration in the following ways:

- Early next week, Stats NZ to share with OPC milestones/timelines of legislative work
- On or about Tue 23 Feb, Stats NZ send OPC the agency consultation draft of the 2<sup>nd</sup> order Cabinet Paper: response timeframe: approx. 1 week
- Late March/early April, one to two weeks ahead of agency consultation on the draft Bill, Stats NZ to share with OPC any areas of potential concern related to privacy in the draft bill, for Stats/OPC discussion
- Early/mid April, Stats NZ send OPC the agency consultation draft of the Data and Statistics Bill: response timeframe: approx. 1 week
- Further out, opportunities to collaborate on communicating the privacy implications of the new legislation

As noted in the meeting, timeframes are highly sensitive to changing legislative and other priorities, so any dates indicated are our estimates for your information.

Please let me know if I have left anything out.

Ngā mihi  
Gareth

**Gareth McGuinness** (pronouns: he/him/his)  
Manager – Legislative Policy | Kaiwhakahaere – Kaupapahere Ture  
Data System Leadership | Kaiārahi Pūnaha Raraunga  
Stats NZ Tatauranga Aotearoa  
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## 23/03/2021 - Feedback Data and Statistics Bill

General: Is there a need to define 'research' and 'research purpose'?

Specific clauses:

- 19 (3) & the suggestion for this subclause to be omitted  
Our preference is to include how this would interact with the Privacy Act. One suggestion would be to add in: Nothing in this section limits the Privacy Act 2020.

- 33 (a) information supplied by a person or entity in respect of which disclosure is consented to in writing by the person, or a competent officer of the entity, who or that supplied it

Info supplied by a person of which disclosure is consented to in writing by a competent officer of the entity? Is this a mistake in wording/writing?

- (c) the manner in which the data will be stored, accessed, and used  
We would like this to also refer to retention of data
- 46 Additional requirements if overseas person seeking access to data  
Have you considered being more specific how the GS can put in more safeguards, similar to IPP12? This would also be good from a consistency perspective.
- 46 Has StatsNZ considered data sovereignty issues in relation to overseas access to data? Would consultation with Māori be appropriate before facilitating access?
- 46. Consultation with the Privacy Commissioner before agreeing to overseas access?
- 47 When Statistician may provide identifying information to person public sector agency  
We would like to see more clarity what this means – what situations would this apply to??
- 48 (1) (b) (i) – yes, do expressly state what are the exception provisions
- 49 (6) (b) – does this include the Privacy Act, i.e. the Privacy Act applies to this section?
- 51 – Did the Statistics Act 1975 have a similar provision around search warrants? Seems quite an extreme measure to get data.
- 56 service provision – does this also cover overseas people?
- 89 regulations - anything about compliance notices
- The Privacy Act does have regulation making power for compliance notices (PA s 215 (1) (c))
- Schedule 2, pt 1, OIA - does not include information other than private sector agencies  
→ should this be public sector agencies?

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**From:** [David Fraser](#)  
**To:** [\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#); Peter Salter;  
[\[redacted\]](#); [\[redacted\]](#); Rob Hodgson;  
[\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#);  
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[\[redacted\]](#); [\[redacted\]](#); Doug Lambert; Tina MacLean; Echo Brooke-  
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Wright; [\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#);  
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Jonno Ingerson; Adam Brown; [\[redacted\]](#); [\[redacted\]](#); Neil Hurley; Dan  
Elder; [\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#);  
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[\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#); Michael Eglinton [TSY];  
[\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#); Matt Haigh;  
[\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#);  
[\[redacted\]](#); [\[redacted\]](#); [\[redacted\]](#); Ewan  
Lincoln; [\[redacted\]](#); Darin Bishop  
**Cc:** [Beverley Braybrook](#); [Jacqueline Derby](#); [Anne O'Driscoll](#)  
**Subject:** Data and Statistics Bill - draft Bill for agency consultation  
**Date:** Friday, 28 May 2021 2:56:08 pm  
**Attachments:** [Data and Statistics Bill-v18.0.pdf](#)

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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  
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## About Aotearoa, for Aotearoa

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**From:** [Justin Kim](#)  
**To:** [Ewan Lincoln](#)  
**Cc:** [Janet Dick](#)  
**Subject:** FW: Data and Statistics Bill - initial thoughts  
**Date:** Tuesday, 8 June 2021 11:15:59 am  
**Attachments:** [Data and Statistics Bill-v18.0.pdf](#)  
[image001.jpg](#)  
[image002.jpg](#)  
[image003.png](#)

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Hello – my initial thoughts below as discussed. I thought I would let Janet have a once through since she also reviewed the first draft of the bill, but in the interests of time I will send your way

---

**From:** Justin Kim  
**Sent:** Thursday, 3 June 2021 4:40 pm  
**To:** Janet Dick <~~xc@xx~~>  
**Subject:** Data and Statistics Bill - initial thoughts

Hi Janet

Thanks for offering to provide a fresh set of eyes over the updated version of the Data and Statistics Bill a lot of these are based on our previous comments which you will be well aware of so please don't spend too much time on this, just a quick review would be very helpful so that I'm not completely off base.

The updated version is **attached**. My comments are as follows:

- My overarching comment is that our previous comments haven't really been reflected in this new version of the Bill. Do we need oversight here? I would be inclined to say yes. There are several instances where the Bill refers to the collection and use of information. I suspect that, given the lack of reference to the Privacy Act, the Bill intends override the Privacy Act – see in particular clauses 23, 24, and 52.
- We should also point out that the word 'consent' does not appear in the Privacy Act in relation to the use and onward disclosure of PI (see clauses 25(8)(a), 37(a), 39(3) and 51(2)(a)) and would prefer 'authorisation' for consistency across leg, but that might be too big of an ask. The Bill is also inconsistent as it sometimes uses the word 'agrees' instead of 'consent', so we should at the very least point it out (see for example clause 27(2)(b)).
- Clause 25 refers to joint collections of information and is new. It states that the Statistician may enter into an agreement with a public sector agency for the collection, jointly with the Statistician, of information that the agency has, or agencies have, authority to collect for the performance of their functions or activities. The Statistician is required to consult with an 'appropriate officer of each public sector agency that will be a party to the agreement'. I think it would be wise to also include a PC consultation requirement if the agencies wish to collect personal information (see for example Schedule 1 of the Electronic Identity Verification Act 2012). Perhaps also a PC review function, as well as a requirement for clarifying whether the information collection will be ongoing or a one-off.
- Clause 37 states that the Statistician must take all reasonable steps to ensure that they do not publish or otherwise information in a form that could reasonably be expected to identify any individual or organisation. However, the clause then sets out exceptions to this rule.
  - One is that the information is publicly available under any Act or publicly available from other sources – compare this to our IPP 11(1)(d), which also has the caveat that 'in the circumstances of the case, it would not be unfair or unreasonable to disclose the information'
  - Should this also include sufficiently de-identified information?
- The term 'identifying information' is used in clause 38. This is slightly different to the

definition of 'personal information' which refers to any information *about an identifiable individual*. The net is slightly narrower here!

- I agree with Ewan in that clause 39 is unclear about the criteria for classifying documents as 'historical'. There will inevitably be PI involved here.
- Clause 44 refers to the publication of official statistics. I understand that official statistics won't be identifiable information – in which case no worries.
- Clause 45 states that the Statistician may authorise access to data for the purposes of stats and research, and the Statistician may impose conditions relating to access, use and publication/disclosure. Does the PC want consultation or authorisation rights here? There is the statistics and research exception in our IPPs but we can't be sure that this will apply each time.
- I note that clause 48 is substantially very similar to the one found in the last Bill. As per our previous comments we would also like to see a reference to retention and disposal at 48(c).
- I also note that clause 49 is substantially similar to the previous version. We raised the IPP 12 question last time and they didn't seem keen. Should we require PC oversight/consultation requirement for any agreement entered into between an overseas person and the Statistician or any other agency for overseas access to data? Same as clause 50 – should we require PC consultation before the Statistician publishes information about access to data under Part 5, subpart 1?
- They seemed to have removed old clause 47 (which refers to access to identifying info). Good news? Do we need it?

I will be taking my comments to Ewan and Peter on Tuesday.

Cheers

**Justin (Dong Jun) Kim**

Legal Adviser | Kaitohutohu Taha Ture

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**From:** [John Edwards](#)  
**To:** [Ewan Lincoln](#)  
**Cc:** [Peter Mee](#); [Liz MacPherson](#)  
**Subject:** RE: Data and Statistics Bill - draft Bill for agency consultation  
**Date:** Monday, 14 June 2021 9:11:47 am

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Thanks Ewan

Those comments look fine thanks. I agree that it would not be necessary for the GS to consult with OPC under cl 45.

JE

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**From:** Ewan Lincoln <xxxx.xxxxxx@xxxxxxx.xxx.xx>  
**Sent:** Monday, 14 June 2021 8:57 am  
**To:** John Edwards <xxxx.xxxxxx@xxxxxxx.xxx.xx>  
**Cc:** Peter Mee <xxxx.xxx@xxxxxxx.xxx.xx>; Liz MacPherson <Liz.MacPherson@privacy.org.nz>  
**Subject:** FW: Data and Statistics Bill - draft Bill for agency consultation  
**Importance:** High

Good morning John – just a reminder about the comment on this Bill, which it would be good to provide to Stats NZ today (it was due on Friday, though Stats have indicated it's OK to provide early this week). I'll be out for most of this morning, but available to discuss the comments this afternoon.

Thanks

Ewan

---

**From:** Ewan Lincoln  
**Sent:** Friday, 11 June 2021 3:04 pm  
**To:** John Edwards <[xxxx.xxxxxx@xxxxxxx.xxx.xx](#)>  
**Cc:** Liz MacPherson <[xxx.xxxxxxxxxx@xxxxxxx.xxx.xx](#)>; Peter Mee <[xxxxx.xxx@xxxxxxx.xxx.xx](#)>  
**Subject:** FW: Data and Statistics Bill - draft Bill for agency consultation  
**Importance:** High

Hi again John

Liz has had a very useful discussion this afternoon with the Chief Legal Officer at Stats NZ, who is very receptive to the issues raised below. He has also said that it's fine to provide our feedback early next week, if you need more time to review the draft feedback.

If you can just let me know if you'd like to send our feedback to Stats today, or if you will provide your comments on Monday, that would be great.

Thanks

Ewan

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**From:** Ewan Lincoln  
**Sent:** Thursday, 10 June 2021 5:16 pm

**To:** John Edwards <[xxxx.xxxxxxx@xxxxxxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxxxx.xxx.xx)>

**Cc:** Peter Mee <[xxxxx.xxx@xxxxxxx.xxx.xx](mailto:xxxxx.xxx@xxxxxxx.xxx.xx)>; Liz MacPherson <[xxx.xxxxxxxxxx@xxxxxxx.xxx.xx](mailto:xxx.xxxxxxxxxx@xxxxxxx.xxx.xx)>

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

**Importance:** High

Hi John

Below is a draft comment on the draft Data and Statistics Bill, to send to Stats NZ. Comments are due by COP Friday 11 June, so can you please **provide your feedback by 3 pm Friday**? The draft Bill is attached.

OPC provided verbal feedback on an earlier draft of this Bill. Our earlier feedback doesn't seem to have been particularly well reflected in the current draft of the Bill. On the other hand, there are no real show-stoppers for us in the Bill. The Legal team has had input to these draft comments, and they have been reviewed by Liz.

The final draft Bill and LEG paper are expected in July.

A question for you to consider is whether you would expect the Privacy Commissioner to have any role in being consulted about, or reviewing, any collection, use or disclosure of personal information that is authorised under the Bill. For example, should the Privacy Commissioner be consulted before the Statistician under clause 45 authorises an individual or agency to access personal information held by Stats NZ for research purposes?

My feeling is that it would place an unnecessary burden on OPC to have a statutory requirement to be consulted about such matters. The Bill places clear requirements on the Statistician to ensure that appropriate conditions and safeguards are in place, and I don't see a need for oversight or monitoring of the Statistician's exercise of their statutory powers.

Let me know if there's anything you'd like to discuss.

Thanks

Ewan

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. 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 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).
- 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).



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[xxx.xxxxxx@xxx.xxx.xx](mailto:xxx.xxxxxx@xxx.xxx.xx) ; [xxxxx.xxxxxxx@xxxx.xxx.xx](mailto:xxxxx.xxxxxxx@xxxx.xxx.xx) ; Matt Haigh <[xxxxx.xxxxxx@xxxx.xxx.xx](mailto:xxxxx.xxxxxx@xxxx.xxx.xx) >;  
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[xxxx.xxxxxx@xxxxxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxxxxx.xxx.xx) ; [xxxx.xxxxxx@xxxxxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxxxxx.xxx.xx) ; Ewan Lincoln  
<[xxxx.xxxxxxx@xxxxxxxxxxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxxxxxxxx.xxx.xx) >; [xxxxx.xxxxx@xxx.xxx.xx](mailto:xxxxx.xxxxx@xxx.xxx.xx) ; Darin Bishop <[xxxxx@xxx.xxx.xx](mailto:xxxxx@xxx.xxx.xx) >  
**Cc:** Beverley Braybrook <[xxxxxxxxxxxxxxxx@xxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxx.xxx.xx) >; Jacqueline Derby  
<[xxxxxxxxxxx.xxxxx@xxx.xxx.xx](mailto:xxxxxxxxxxx.xxxxx@xxx.xxx.xx) >; Anne O'Driscoll <Anne.O'xxxxxxxx@xxx.xxx.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)

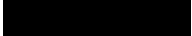
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**Dave Fraser** (pronouns: he/him/his)

Senior Policy Advisor – Legislative Policy | Kaitohutohu Matua – Kaupapa Ture  
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**From:** [David Fraser](#)  
**To:** [Ewan Lincoln](#)  
**Subject:** RE: Data and Statistics Bill - draft Bill for agency consultation  
**Date:** Monday, 14 June 2021 9:33:16 am  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.jpg](#)  
[image004.png](#)

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Hi Ewan,

Thank you very much for sending through the below. We will consider alongside other agency feedback and let you know in due course whether we need to follow up on anything specific.

And no problem about sending this through today – Emmett gave us a heads up that he was going to chat with Liz on Friday afternoon, so it would've been a bit of an ask for you to finalise comments on the day.

Ngā mihi,

Dave

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

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

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**From:** Ewan Lincoln <xxxx.xxxxxx@xxxxxx.xxx.xx>

**Sent:** Monday, 14 June 2021 9:22 AM

**To:** David Fraser <xxxx.xxxxxx@xxxx.xxx.xx>

**Cc:** Emmett Geoghegan <xxxx.xxxxxxx@xxxx.xxx.xx>; Liz MacPherson <Liz.xxxxxxxx@xxxxxx.xxx.xx>;

Peter Mee <xxxx.xxx@xxxxxx.xxx.xx>; Justin Kim <xxxxxx.xxx@xxxxxx.xxx.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.

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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

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**From:** David Fraser <[xxxx.xxxxxx@xxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxx.xxx.xx)>

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

**To:** [xxx.xxxxxxxxxx@xxx.xxx.xx](mailto:xxx.xxxxxxxxxx@xxx.xxx.xx); [xxxxxx.xxxxxxxxxx@xxx.xxx.xx](mailto:xxxxxx.xxxxxxxxxx@xxx.xxx.xx); [xxxxxx.xxxxxx@xxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxx.xxx.xx); Peter Salter



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Ingerson <xxxx.xxxxxxxx@xxx.xxx.xx>; Adam Brown <xxxx.xxxxxxxx@xxx.xxx.xx>; xxxxxxx.xxxxxxxx@xxx.xxx.xx;  
xxxx.xxxxxxxx@xxx.xxx.xx; Neil Hurley <xxxx.xxxxxxxx@xxx.xxx.xx>; Dan Elder <xxxx.xxxxxxxx@xxx.xxx.xx>;  
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deb.potter <xxx.xxxxxxxx@xxxx.xxxx.xx>; xxxxxxx.xxxxxxxx@xxxx.xxxx.xx;  
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xxxxxxxxxxxxxxx@xxxxxxxxxxxx.xxxx.xx; xxx.xxxxxxxx@xxxxxxxxxxxx.xxxx.xx; xxx.xxxxxxxx@xxxxxxxxxxxx.xxxx.xx; Ewan  
Lincoln <xxxx.xxxxxxxx@xxxxxxxx.xxxx.xx>; xxxxxxx.xxxx@xxx.xxx.xx; Darin Bishop <xxxxxxx@xxx.xxx.xx>  
**Cc:** Beverley Braybrook <xxxxxxxxxxxxxxx@xxxx.xxxx.xx>; Jacqueline Derby <xxxxxxxxxxxxxxx@xxx.xxx.xx>;  
Anne O'Driscoll <Anne.O'xxxxxxxx@xxx.xxx.xx>

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

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- 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 | Tauranga Aotearoa | [stats.govt.nz](#) | 


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**From:** [David Fraser](#)  
**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  
**Date:** Thursday, 22 July 2021 2:54:43 pm  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.jpg](#)  
[image004.png](#)  
[Draft Bill - Agency responses - Key messages.docx](#)

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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](#) | [REDACTED]

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**From:** Ewan Lincoln <xxxx.xxxxxx@xxxxxx.xxx.xx>  
**Sent:** Monday, 14 June 2021 9:22 AM  
**To:** David Fraser <xxxx.xxxxxx@xxxx.xxx.xx>  
**Cc:** Emmett Geoghegan <xxxx.xxxxxxx@xxxx.xxx.xx>; Liz MacPherson <Liz.xxxxxxxx@xxxxxx.xxx.xx>; Peter Mee <xxxx.xxx@xxxxxx.xxx.xx>; Justin Kim <xxxxxx.xxx@xxxxxx.xxx.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

PO Box 10094 | Wellington 6143 | New Zealand

Level 11 | 215 Lambton Quay | Wellington

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T  | [privacy.org.nz](http://privacy.org.nz)



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**From:** David Fraser <xxxxx.xxxxxx@xxxxx.xxx.xx>

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

**To:** xxx.xxxxxxxx@xxx.xxx.xx; xxxxx.xxxxxxxx@xxx.xxx.xx; Steven.Sue00x@xxx.xxx.xx; Peter Salter <xxxxx.xxxxxxxx@xxx.xxx.xx>; xxxxx.xxxxxxxx@xxx.xxx.xx; Michelle.Blxxx@xxx.xxx.xx; Rob Hodgson <xxx.xxxxxxxx@xxx.xxx.xx>; xxxxx.xxxxxxxx@xxx.xxx.xx; Vaughan.Doddxxx@xxx.xxx.xx; xxx@xxx.xxx.xx; xxxxx.xxxxxx@xx.xxx.xx; xxxxx.xxxxx@xx.xxx.xx; Briax.xxxxxx@xxx.xx.xx; xxxxx.xxxxx@xxx.xx.xx; xxxxx.xxxxxxxx@xxx.xx.xx; zeeman.VanDerMerwe@acc.co.nz; Sebastian.Morgan-xxxxx@xxx.xx.xx; xxxxxxx.xxxxx@xxx.xxx.xx; xxxxx.xxxxx@xxx.xxx.xx; Doug Lambert <xxxx.xxxxx@xxx.xxx.xx>; Tina MacLean <xxxx.xxxxx@xxx.xxx.xx>; Echx.xxxxxxxx@xxx.xxx.xx; xxxxxxx.xxxx@xxx.xxx.xx; xxxxxxx.xxxxx@xxx.xxx.xx; xxxxxxxxxx@xxx.xxxt.nz; Elaine Wright <xxxxxx@xxx.xxx.xx>; xxxxxxx@xxx.xxx.xx; xxxxxxx@xxx.xxx.xx; Phixxx.xxxxx@xxxxxxxxxxx.xxx.xx; xxxxx.xxxxx@xxxxxxxxxxx.xxx.xx; xxxxxxx.xxxxx@xxxxxxxxxxx.xxx.xx; xxxxx.xxxxx@xxxx.xxx.xx; Jonno Ingerson <xxxxx.xxxxx@xxx.xxx.xx>; Adam Brown <xxxx.xxxxx@xxx.xxx.nz>; xxxxx.xxxxx@xxx.xxx.xx; xxx.xxxxx@xxx.xxx.xx; Neil Hurley <xxxx.xxxxx@xxx.xxx.xx>; Dan Elder <xxx.xxxxx@xxx.xxx.xx>; xxxxx.xxxxx@xxx.xxx.xx; xxxxx.xxxxx@xxxx.xxx.xx; Tracy.Parsons@mfat.govt.nz; xxx.xxxxx@xxxx.xxx.xx; xxx.xxxxx@xxxx.xxx.xx; kerryn.fowlie@mfat.govt.nz; xxxxxxx@xxx.xxx.xx; xxxxxxxxxx.xxxxx@xxx.xxx.xx; xxxxx.xxxxx@xxx.xxx.xx; Ana Koloto <anx.xxxxx@xxx.xxx.xx>; deb.potter <xxx.xxxxx@xxxx.xxx.xx>; xxxxx.xxxxxxxx@xxxxxx.xxx.xx; xxxxxxx.xxxxx@xxxxxx.xxx.xx; xxxxx.xxxxx@xxxxxx.xxx.xx; Adriana.xxxxx@xxxxxx.xxx.xx; xxxxx.xxxx@xxxxxx.xxx.xx; xxx.xxxxx@xxxxxxxxxxx.xxx.xx; meredith.xxxxx@xxxxxxxxxxx.xxx.xx; Michael Eglinton [TSY] <xxxxxx.xxxxx@xxxxxxxx.xxx.xx>; Shaan.Badenhorst@treasury.govt.nz; xxx.xxxxx@xxxx.xxx.xx; xxxxx.xxxxx@xxxx.xxx.xx; Matt Haigh <matt.haix@xxxx.xxx.xx>; xxxxx.xxxxx@xxxx.xxx.xx; xxxxxxx.xxxxx@xxxxxx.xxx.xx; Andrew.Haxxxx@xxxxxxxxxxx.xxx.xx; xxxxxxxxxx@xxxxxxxxxxx.xxx.xx; xxx.xxxxx@xxxxxxxxxxx.xxx.xx; mark.bxxxx@xxxxxxxx.xxx.xx; Ewan Lincoln <xxxx.xxxxx@xxxxxxxx.xxx.xx>; xxxxx.xxxx@xxx.xxx.xx; Darin Bishop <xxxxx@xxx.xxx.xx>

**Cc:** Beverley Braybrook <xxxxxxxx.xxxxx@xxxx.xxx.xx>; Jacqueline Derby <xxxxxxxxxxx@xxx.xxx.xx>; Anne O'Driscoll <Anne.O'xxxxxxx@xxx.xxx.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**

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- 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)
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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) | [REDACTED]

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## Agency responses - key messages

### **Te Tiriti o Waitangi and the Māori – Crown relationship**

- A number of agencies raised questions about, or suggested amendments to, clauses that reflected the Māori-Crown relationship and Te Tiriti o Waitangi;
- We worked with Kiri Tahana (Kahui Legal)<sup>1</sup> and the Data Iwi Leaders Group on drafting instructions to PCO. The drafting instructions were informed by the earlier public consultation process in September 2018 and Stats NZ's broader engagement and relationships with iwi/Māori, including work on Māori data governance and work to improve data collection for 2023 Census;
- We sought feedback from Te Arawhiti, Crown Law and the Ministry of Justice on the draft provisions and more recently, on our proposed response to feedback from Data ILG on v18 of the Bill;
- We are continuing to work with these agencies, Kiri Tahana and Data ILG on how the Bill could ensure that the Government Statistician (GS) provide opportunities for participation, including partnering, in relation to the multi-year data and statistical programme, census and standards;
- We note that many agencies have a strong interest in how legislation provides for Te Tiriti and the Māori-Crown relationship. Once we have completed work on our provisions, we would be happy to share lessons learned with interested agencies.

### **Impacts on agencies:**

- Agencies raised questions about the impact of new provisions.

### **Clarification of joint collections and authorising agencies to collect data on behalf of the GS**

- A number of agencies asked about the distinction between joint collections (clause 25) and authorising agencies to collect data on behalf of the GS (clauses 23 and 24);
- Joint collections—
  - Used as a mechanism for Stats NZ and another agency to jointly collect and share data that both agencies require for official statistics or for research;
    - E.g. the Agricultural Production Survey, a joint survey run by Stats NZ and the Ministry for Primary Industries
  - The agency must have a lawful authority to collect the data for the performance of their functions or duties;
  - Joint collections must be approved by the Minister;
  - Expectation is that the data provider will be informed that the data is being collected under a joint collection and that data may be shared with the other agency, but only for the purposes of official statistics or research;
  - Statistical confidentiality requirements under the Data and Statistics Act apply;
- Authorising agencies to collect data on behalf of the GS
  - Clarifies that it is lawful for other agencies to collect data on behalf of the Government Statistician;

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<sup>1</sup> Stats NZ engaged Kiri Tahana (Kahui Legal) in an advisory capacity, rather than a legal capacity, to provide advice on drafts of the Bill alongside the Data Iwi Leaders Group.

- The agency does not have a lawful authority under their own legislation to collect the data required by the GS;
- This is used when another agency is better placed to collect data the GS requires for official statistics;
  - E.g. at the border it is more efficient for Stats NZ to add questions to the arrivals card than it is to run a separate survey;
- The agency is unable to use the data;
- The GS cannot require the other agency to collect data – the expectation is that this would be by agreement between the GS and the CE.

### **Standards**

- New legislation will continue to enable the GS to set standards across any area relevant to official statistics and/or accessing and/or using data for research;
- The GS will be able to make standards, or parts of standards, mandatory where appropriate, either across the system or for particular public sector agencies;
- Legislative best practice is that it is undesirable to legislate for inter-departmental consultation. We note that a responsible use of the standard setting power would involve engagement with affected agencies prior to any standards being made mandatory;
- Agencies will continue to be involved in the design of new standards and review of existing standards as appropriate;
  - This process will enable agencies to address technical matters, issue relating to cost and implementation timeframes, alignment with other legislative regimes etc. with the GS.

### **Confidentiality commitments**

- Confidentiality commitments will replace the Statistics Act's declarations of secrecy, declarations of secrecy are inflexible and not fit for purpose in the modern data environment;
- Stats NZ employees and researchers accessing data held by Stats NZ must sign a confidentiality commitment;
- There is flexibility for the GS to require others to sign a confidentiality commitment if appropriate including:
  - employees of other public sector agencies collecting data or producing official statistics;
  - others who may have access to data provided to the GS under the Act, including contractors, community leaders or other volunteers assisting with collection (eg, for the 2023 Census dress rehearsal in March 2021 we worked with ngaa poutiaki haponi (community leaders) in Raahui Pookeka (Huntly) to improve Māori engagement);
- The Bill will provide for statutory declarations made under the 1975 Act to be treated as a confidentiality commitment.

### **Multi-Year Data and Statistical Programme**

- Some agencies asked about agency consultation – the GS will consult widely with agencies and others as appropriate when preparing the draft programme.

- This will enable agencies to identify and prioritise their most important data and statistics.
- It is intended that the Data Investment Plan will inform the first iteration of the data and statistical programme.
- The requirement for the GS to engage early and meaningfully with Māori reflects the Treaty relationship, and the significance of the programme in addressing data gaps.

### **Collecting data for official statistics**

- The mandatory data collection provisions for official statistics enable the GS to require provision of the most appropriate data, from the most appropriate source, in the most appropriate format.
  - This recognises that in the modern data environment, it may be more efficient to collect data about, for example, an organisation from a professional body; and to access new and emerging data sources (eg, data collected by drones and satellites).
- A reasonable use of the mandatory collection power would always require consideration of feasibility, cost and other impacts on people, organisations or other public sector agencies.
- The Bill makes it clear that agencies are authorised to provide data to Stats NZ for official statistics and research, unless other legislation expressly prevents provision of the information.
- This ensures the legislation is future proof, transparent and overcomes uncertainty, providing confidence that agencies are authorised to provide information to the Government Statistician even as new legislation is passed and new information sharing regimes are developed.

### **Application of the access framework for research**

- The Bill enables other agencies to use the access framework in the Bill, with agreement of the Government Statistician. If an agency chose to do this, they would be able to use the compliance and enforcement powers relating to research access.
- As part of implementation planning, Stats NZ will develop an authorising framework for other agencies.

### **Alignment with other legislative regimes**

- A number of agencies asked about the relationship between the Bill and the Public Records Act, the Privacy Act, and the Tax Administration Act;
- It is intended that the Bill aligns with these regimes.
- We are working with PCO to address agencies concerns about references to other legislation in the Bill; this work will ensure that the references are appropriate and the relationship between the Bill and other legislation is clear.

### **Statistical Embargos**

- New provisions enable the GS to release official statistics under an embargo; the GS will be able to set conditions depending on the context for a particular statistical release;
- We are working with PCO to add some transparency requirements to these provisions. Our intention is that the GS be required to publish a list of who is under an embargo, the reasons why, the statistics the person has access to, and any conditions imposed. This will provide assurance to the public that embargos are being used appropriately.

**From:** [Ewan Lincoln](#)  
**To:** [Ephraim Wilson](#)  
**Cc:** [Peter Mee](#); [Justin Kim](#)  
**Subject:** FW: FOR CONSULTATION - Data and Statistics Bill  
**Date:** Monday, 26 July 2021 4:21:07 pm  
**Attachments:** [Draft Cabinet paper - Data and Statistics Bill.pdf](#)  
[Draft Data and Statistics Bill \[for consultation\].pdf](#)

---

Hi Ephraim

I'll leave it to you to prepare our response, but happy to meet to discuss. Justin has also previously been involved in reviewing this Bill.

Thanks

Ewan

---

**From:** Frances Aiken <xxxxxxx.xxxxx@xxxxx.xxxx.xx>  
**Sent:** Monday, 26 July 2021 4:11 pm  
**To:** xxxxx.xxxxxxx@xxx.xx.xx; xxxxx.xxxxxxx@xxx.xx.xx; xxxxx.xxxxxxxx@xxx.xx.nz; xxxxx.xxxxxxxx@xxx.xx.xx; xxxxx.xxxxxxxx@xxx.xx.xx; Chris McDowall <xxxxx.xxxxxxx@xxxx.xxxx.xx>; xx.xxxxxxx@xxxx.xxxx.xx; Evelyn Wareham <xxxxxx.xxxxxxx@xxxx.xxxx.xx>; xxxxx.xxxxxxx@xxxx.xxxx.xx; Tony Waldegrave <xxxx.xxxxxxxx@xxxx.xxxx.xx>; xxx.xxxxxxx@xxxx.xxxx.xx; Emma Mawby <xxxx.xxxxxxx@xxxx.xxxx.xx>; xxxxx.xxxxxxx@xxxx.xxxx.xx; paul.merwood@mbie.govt.nz; xxxxxxx.xxxxxxx@xxxxxxx.xxxx.xx; xxxxx.xxxxxxx@xxxxxxx.xxxx.xx; xxxxx.xxxxxxx@xxxxxxx.xxxx.xx; xxxxx.xxxxxxx@xxxxxxx.xxxx.xx; xxx.xxxxxxxx@xxx.xxxx.xx; Pennie.Pearcxxx@xxx.xxxx.xx; xxxxx.xxxxxxx@xxx.xxxx.xx; Peter Salter <xxxxxx.xxxxxxxx@xxx.xxxx.xx>; xxx.xxxxxxxx@xxx.xxxx.xx; xxxxx.xxxxxxx@xxx.xxxx.xx; Rob Hodgson <xxx.xxxxxxxx@xxx.xxxx.xx>; xxxxx.xxxxxxxx@xxx.xxxx.xx; xxxxxxx.xxxxxxx@xxx.xxxx.xx; xxx@xxx.xxxx.xx; xxxxxxx.xxxxxxx@xxx.xxxx.xx; xxxxxxxxxx@xxx.xxxx.xx; Elaine Wright <xxxxxxx@xxx.xxxx.xx>; hthygesen@doc.govt.nz; xxxxxxxxx@xxx.xxxx.xx; xxxxx.xxxxxxxx@xxxxxxxxxxx.xxxx.xx; xxxxx.xxxxxxxx@xxxxxxxxxxx.xxxx.xx; xxxxx.xxxxxxx@xxxxxxxxxxx.xxxx.xx; Russell Cooke <xxxxxxx.xxxxxxx@xxx.xxxx.xx>; Joanne Koreman <xxxxxx.xxxxxxx@xxx.xxxx.xx>; Antony Moss <xxxxxx.xxxxxxx@xxx.xxxx.xx>; xxx.xxxxxxx@xxx.xxxx.xx; xxxxx.xxxxxxx@xxx.xxxx.nz; xxxxxxx.xxxxxxx@xxx.xxxx.xx; xxxxx.xxxxxxx@xxx.xxxx.xx; Scott.Wilson@dia.govt.nz; xxxxx.xxxxxxx@xxx.xxxx.xx; Jonno Ingerson <xxxxxx.xxxxxxxx@xxx.xxxx.xx>; Adam Brown <xxxx.xxxxxxx@xxx.xxxx.xx>; xxxxx@xxxx.xxxx.xx; xxxxxxxxx@xxxx.xxxx.xx; Ruth Fischer-Smith <xxxxxxxxxxxxxx@xxxx.xxxx.xx>; xxxxx.xxxxxxx@xxx.xxxx.xx; xxxxx.xxxxxxx@xxx.xxxx.xx; xxxxxxx.xxxxxxx@xxx.xxvt.nz; Neil Hurley <xxxx.xxxxxxx@xxx.xxxx.xx>; Dan Elder <xxx.xxxxxxx@xxx.xxxx.xx>; Laura.Hardxxx@xxx.xxxx.xx; xxxxx.xxxxxxx@xxxxxxxxxxx.xxxx.xx; xxxxx.xxxxxxx@xxxxxxxxxxx.xxxx.xx; Shane Beverley <xxxxxx.xxxxxxxx@xxxxxxxxxxx.xxxx.xx>; xxxxxxx.xxxxxxxx@xxxxxxxxxxx.xxxx.xx; xxxxx.xxxxxxx@xxxxxxxxxxx.xxxx.xx; Selena Smeaton <selena.smeaton@education.govt.nz>; xxx.xxxxxxx@xxxxxxxxxxx.xxxx.xx; xxxxx.xxxxxxx@xxxxxxxxxxx.xxxx.xx; xxx.xxxxxxx@xxxxxxxxxxx.xxxx.xx; xxxxx.xxxxxxx@xxxx.xxxx.xx; Tracy.Parsons@mfat.govt.nz; xxx.xxxxxxx@xxxx.xxxx.xx; xxx.xxxxxxx@xxxx.xxxx.xx; kerryn.fowlie@mfat.govt.nz; xxxxx.xxxxxxxx@xxxxxx.xxxx.xx; xxx.xxxxxxxx@xxxxxx.xxxx.xx; xxxxx.xxxxxxxx@xxxxxx.xxxx.xx; xxxxx.xxxxxxxx@xxxxxx.xxxx.xx; Maree\_Roberts@moh.govt.nz; Jones,

Suzanne <xxxxxxx.xxxxx@xxxxxxx.xxxx.xx>; Breen, Tony <tony.breen@justice.govt.nz>;  
xxxxxx.xxxxx@xxxxxxx.xxxx.xx; xxx.xxxxxxxx@xxxxxxx.xxxx.xx; mppadvice@mpp.govt.nz;  
xxxxxxxxxx.xxxxxx@xxx.xxxx.xx; xxxxxx.xxxxx@xxx.xxxx.xx; Ana Koloto  
<xxx.xxxxxx@xxx.xxxx.xx>; deb.potter <xxx.xxxxxx@xxxxx.xxxx.xx>;  
xxxxxxxx.xxxxx@xxxxxxxx.xxxx.xx; xxxxxx.xxxxxxxxxx@xxxxxx.xxxx.xx;  
xxxxxxxx.xxxxxx@xxxxxx.xxxx.xx; xxxxxx.xxxxxxxx@xxxxxx.xxxx.xx;  
xxxxxxxx.xxxxxx@xxxxxx.xxxx.xx; xxxxx.xxxx@xxxxxx.xxxx.xx; helen.kennarx@xx.xxxx.xx;  
xxxxxxxx.xxxxxxxx@xx.xxxx.xx; xxxxxx.xxxxx@xx.xxxx.xx; hugo.vitalis@publicservice.govt.nz;  
xxxxxxxx.xxxxxx@xxxxxxxxxxxxxx.xxxx.xx; Michael Eglinton [TSY]  
<xxxxxxxx.xxxxxx@xxxxxxxx.xxxx.xx>; xxxxx.xxxxxxxxxx@xxxxxxxx.xxxx.xx;  
xxxx.xxxxxxxxxxxxxx@xxxxxxxx.xxxx.xx; xxx.xxxxx@xxx.xxxx.xx; Wendy.bennxxx@xxxx.xxxx.xx;  
xxx@xxx.xxxx.xx; Matt Haigh <xxxx.xxxx@xxx.xxxx.xx>; steffi.schuster@rbnz.govt.nz;  
xxxxxxxx.xxxxxx@xxxxxxx.xxxx.xx; xxxxxx.xxxxxx@xxxxxxxxxx.xxxx.xx;  
xxxxxxxxxxxxx@xxxxxxxxxx.xxxx.xx; xxx.xxxxx@xxxxxxxxxx.xxxx.xx;  
xxx.xxxxx@xxxxxxxx.xxxx.xx; Ewan Lincoln <xxxx.xxxxxx@xxxxxxxx.xxxx.xx>;  
xxxx.xxxx@xxx.xxxx.xx; Darin Bishop <xxxx@xxx.xxxx.xx>  
**Cc:** Beverley Braybrook <xxxxxxxx.xxxxxxxx@xxxxxx.xxxx.xx>; David Fraser  
<xxxxxx.xxxxxx@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 | Kaitohutohu Matua – Kaupapa Ture  
Stats NZ | Tauranga Aotearoa | [stats.govt.nz](https://stats.govt.nz)

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## Ephraim Wilson

---

**From:** Ewan Lincoln  
**Sent:** Friday, 30 July 2021 12:14 pm  
**To:** Ephraim Wilson; Justin Kim  
**Cc:** Peter Mee  
**Subject:** RE: Response to Stats NZ re the Data and Stats Bill

Thanks Ephraim, this looks good. Just a few comments highlighted below.

---

**From:** Ephraim Wilson <Ephraim.Wilson@privacy.org.nz>  
**Sent:** Friday, 30 July 2021 11:33 am  
**To:** Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>; Justin Kim <Justin.Kim@privacy.org.nz>  
**Cc:** Peter Mee <Peter.Mee@privacy.org.nz>  
**Subject:** Response to Stats NZ re the Data and Stats Bill

Hi All

Please see my draft comment to Stats NZ re its updated Data and Stats Bill **below**.

And please amend/comment as you see fit. Then I'll send to Liz (does that sound right **Peter?**).

Cheers  
Ephraim

---

“Tēnā koe

Thank you for inviting our comment on the **attached** 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 them below for your consideration, along with new comments we have on the updated Bill–

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

The Bill does not expressly deal with its 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 would help to clearly state the relationship with the Privacy Act in the Bill.

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.

This raises another point: the Cabinet Paper at para 24 states that the Bill complies (inter alia) with the principles and guidelines of the Privacy Act.

- We seek to understand the basis on which you make this statement – theoretically, this might be right, but in truth the Bill overrides the Act. We suggest the Cabinet paper include a discussion of alignment with the Privacy Act, similar to the discussions at paras 25-29 of Treaty of Waitangi and Bill of Rights Act compliance.

There are also numerous references to “privacy” in the Bill.

- We want to understand what the meaning of “privacy” is in the Bill, and whether you intend that it imports meaning from elsewhere. **[I’m not too worried about this point personally, what do you think Justin? We haven’t raised it before.]**

### ***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. This power does not exist under the current Statistics Act. We note that it is subject to some restrictions, and to clauses 2 – 4 of Sched 6 of the Public Services 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.

- We seek your reasoning as to 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: cls 24 and 25 with regard to the Statistician authorising public sector agencies to request information on behalf of the Statistician; and Subpart 2 of Part 5 with regard to the Statistician authorising public sector agencies to deal with requests for access to data for the purposes of research.

- We want to know whether the power of delegation is subject to these clauses, as 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 cl 41.

### ***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.
- Clause 50(d) 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. **[I’d be prepared to drop this point – we’ve made it a number of times, and they’ve clearly decided it’s unnecessary. Arguably it is covered by the requirements for security protections]**
- Clause 55(6) provides that nothing cl 55 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). **[Maybe move this to the section on relationship with the Privacy Act?]**  
We would be happy to discuss our comments with you if that would be helpful.

Nāku noa, nā  
Ephraim”

**Ephraim Wilson**  
Policy Adviser

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu  
PO Box 10094, The Terrace, Wellington 6143  
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[privacy.org.nz](http://privacy.org.nz)



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**From:** [Justin Kim](#)  
**To:** [Ephraim Wilson](#); [Ewan Lincoln](#)  
**Cc:** [Peter Mee](#)  
**Subject:** RE: Response to Stats NZ re the Data and Stats Bill  
**Date:** Friday, 30 July 2021 12:21:29 pm  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.png](#)

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Hello – thanks for this, looking good. Have considered your views as well Ewan – I think it's worth raising the point of defining 'privacy', especially given that we're emphasising the relationship between the Bill and the Privacy Act.

Suggested changes in orange

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**From:** Ephraim Wilson <[x@xx](#)>  
**Sent:** Friday, 30 July 2021 11:33 am  
**To:** Ewan Lincoln <[x@xx](#)>; Justin Kim <[Justin.Kim@privacy.org.nz](#)>  
**Cc:** Peter Mee <[x@xx](#)>  
**Subject:** Response to Stats NZ re the Data and Stats Bill

Hi All

Please see my draft comment to Stats NZ re its updated Data and Stats Bill **below**.

And please amend/comment as you see fit. Then I'll send to Liz (does that sound right **Peter?**).

Cheers  
Ephraim

---

"Tēnā koe

Thank you for inviting our comment on the **attached** 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 them below for your consideration, along with new comments we have on the updated Bill–

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

The Bill does not expressly deal with its relationship with the Privacy Act. To the extent that the Bill authorises or requires personal information to be collected, used, or disclosed, **it** those provisions will override the information privacy principles set out in 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 would help to clearly state the relationship with the Privacy Act

in the Bill.

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.

This raises another point: the Cabinet Paper at para 24 states that the Bill complies (inter alia) with the principles and guidelines of the Privacy Act.

- We seek to understand the basis on which you make this statement with respect to the Privacy Act—~~theoretically, this might be right, but in truth the Bill overrides the Act~~. First, we did not express a view on whether the Bill was compliant with the Privacy Act when you consulted our Office on an earlier draft of the Bill. Secondly, we aren’t confident with the language in the Cabinet Paper stating that the Bill ‘complies’ with the Privacy Act given that the relationship between the Bill and the Privacy Act remains unclear (especially if the Bill intends to act as an override to the information privacy principles, as we discuss above). The Cabinet Paper elaborates on how the Bill aligns with the principles of the Treaty of Waitangi and complies with NZBORA (paras 25-29), so we would like to see a similar explanation on how the Bill complies (or interacts) with the Privacy Act.

There are also numerous references to “privacy” in the Bill, but the Bill does not define that term.

- We want to understand what the meaning of “privacy” is in the Bill, and whether you intend that it imports meaning from elsewhere.

### ***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. This power does not exist under the current Statistics Act. We note that it is subject to some restrictions, and to clauses 2 – 4 of Sched 6 of the Public Services 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.

- We seek your reasoning as to 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: cls 24 and 25 with regard to the Statistician authorising public sector agencies to request information on behalf of the Statistician; and Subpart 2 of Part 5 with regard to the Statistician authorising public sector agencies to deal with requests for access to data for the purposes of research.

- We want to know whether the power of delegation is subject to these clauses, as 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 cl 41.

### ***Specific comments***

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- Clause 50(d) 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. **[Up to you whether we want to keep this Ewan/Ephraim – no strong feelings either way, we've raised it before so it's a matter of whether we need to do so again.]**
  - Clause 55(6) provides that nothing cl 55 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) – **can you please clarify? This comment relates to the broader point of the relationship between the Bill and the Privacy Act, as we discuss above.**

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

Nāku noa, nā  
Ephraim”

**Ephraim Wilson**  
Policy Adviser

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu  
PO Box 10094, The Terrace, Wellington 6143  
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**From:** [Ephraim Wilson](#)  
**To:** [Liz MacPherson](#)  
**Cc:** [Peter Mee](#); [Ewan Lincoln](#)  
**Subject:** RE: Response to Stats NZ re the Data and Stats Bill  
**Date:** Monday, 2 August 2021 2:26:00 pm  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.png](#)

---

Hi Liz – I know you’ve got lots on today. Just wondering if you’ve had a chance to look at this before we come back to Stats? Both Ewan and Justin have reviewed..

Thanks , Ephraim

**Ephraim Wilson**  
Policy Adviser

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu  
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[privacy.org.nz](http://privacy.org.nz)



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**From:** Ephraim Wilson  
**Sent:** Friday, 30 July 2021 1:52 pm  
**To:** Liz MacPherson <~~x@xx~~>  
**Cc:** Peter Mee <~~x@xx~~>; Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>  
**Subject:** FW: Response to Stats NZ re the Data and Stats Bill

Hi Liz

Please see **below** my response to the updated Data and Statistics Bill. I’ve also attached the new and old versions of the Bill and the Cab Paper.

I think Ewan discussed with you that you’d review and sign this one off? There are no major show-stoppers – but they don’t appear to have taken up much of our previous advice. This email reiterates some of that previous advice but also makes comments on the new draft.

We’ve been asked to come back to Stats **COB Monday 2 Aug.**

Let me know if you have any comments, changes or suggestions.

Thanks!  
Ephraim  
---

“Tēnā koe

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

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- We seek to understand the basis on which you make this statement with respect to the Privacy Act. First, we did not express a view on whether the Bill was compliant with the Privacy Act when you consulted our Office on an earlier draft of the Bill. Secondly, we aren’t confident with the language in the Cabinet Paper stating that the Bill ‘complies’ with the Privacy Act given that the relationship between the Bill and the Privacy Act remains unclear (especially if the Bill intends to act as an override to the information privacy principles, as we discuss above). The Cabinet Paper elaborates on how the Bill aligns with the principles of the Treaty of Waitangi and complies with NZBORA (paras 25-29), so we would like to see a similar explanation on how the Bill complies (or interacts) with the Privacy Act.

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- We want to know whether the power of delegation is subject to these clauses, as 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 cl 41.

### **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”



**Ephraim Wilson**  
Policy Adviser

**Office of the Privacy Commissioner** Te Mana Mātāpono Matatapu  
PO Box 10094, The Terrace, Wellington 6143

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**From:** [Ephraim Wilson](#)  
**To:** [x@xx](#)  
**Cc:** [Peter Mee](#); [Ewan Lincoln](#)  
**Subject:** OPC CONSULTATION - Data and Statistics Bill  
**Date:** Monday, 2 August 2021 3:28:00 pm  
**Attachments:** [Draft Cabinet paper - Data and Statistics Bill.pdf](#)  
[Draft Data and Statistics Bill \[for consultation\].pdf](#)  
[image001.jpg](#)  
[image002.jpg](#)  
[image003.png](#)

---

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:



[xxxx.xxxxx@xxx.xxx.xx](mailto:xxxx.xxxxx@xxx.xxx.xx); Jonno Ingerson <[xxxx.xxxxxx@xxx.xxx.xx](mailto:xxxx.xxxxxx@xxx.xxx.xx)>; Adam Brown <[xxxx.xxxxx@xxx.xxx.xx](mailto:xxxx.xxxxx@xxx.xxx.xx)>; [xxxxx@xxxx.xxx.xx](mailto:xxxxx@xxxx.xxx.xx); [xxxxxxxx@xxxx.xxx.xx](mailto:xxxxxxxx@xxxx.xxx.xx); [xxxxxxxx@xxxx.xxx.xx](mailto:xxxxxxxx@xxxx.xxx.xx); Ruth Fischer-Smith <[xxxxxxxxxxxxxxxx@xxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxx.xxx.xx)>; [xxxx.xxxxx@xxx.xxx.xx](mailto:xxxx.xxxxx@xxx.xxx.xx); [xxxx.xxxxxx@xxx.xxx.xx](mailto:xxxx.xxxxxx@xxx.xxx.xx); [xxxxxx.xxxxx@xxx.xxx.xx](mailto:xxxxxx.xxxxx@xxx.xxx.xx); Neil Hurley <[xxxx.xxxxxx@xxx.xxx.xx](mailto:xxxx.xxxxxx@xxx.xxx.xx)>; Dan Elder <[xxx.xxxxx@xxx.xxx.xx](mailto:xxx.xxxxx@xxx.xxx.xx)>; [xxxx.xxxxxx@xxx.xxx.xx](mailto:xxxx.xxxxxx@xxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); Shane Beverley <[xxxx.xxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxxxxx.xxx.xx)>; [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); Selena Smeaton <[xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx)>; [xxxx.xxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx); [simon\\_xxxx@xxx.xxx.xx](mailto:simon_xxxx@xxx.xxx.xx); [Maree\\_xxxxxx@xxx.xxx.xx](mailto:Maree_xxxxxx@xxx.xxx.xx); Jones, Suzanne <[xxxxxx.xxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxx@xxxxxxxx.xxx.xx)>; Breen, Tony <[xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx)>; [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxxxxx.xxx.xx); [xxxxxxxxxx@xxx.xxx.xx](mailto:xxxxxxxxxx@xxx.xxx.xx); Ana Koloto <[xxx.xxxxxx@xxx.xxx.xx](mailto:xxx.xxxxxx@xxx.xxx.xx)>; deb.potter <[xxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxx.xxxxxx@xxxxxxxx.xxx.xx)>; [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxxx@xxxxxxxx.xxx.xx); [xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); Michael Eglinton [TSY] <[xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx)>; [xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxx@xxxx.xxx.xx](mailto:xxxx@xxxx.xxx.xx); Matt Haigh <[xxxx.xxxxxx@xxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxx.xxx.xx)>; [xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); [xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx); Ewan Lincoln <[xxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxx@xxxxxxxx.xxx.xx)>; [xxxxxx.xxxxx@xxx.xxx.xx](mailto:xxxxxx.xxxxx@xxx.xxx.xx); Darin Bishop <[xxxxxx@xxx.xxx.xx](mailto:xxxxxx@xxx.xxx.xx)>

**Cc:** Beverley Braybrook <[xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxxxxxxxxxx@xxxxxxxx.xxx.xx)>; David Fraser <[xxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxx.xxxxxx@xxxxxxxx.xxx.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 | Kaitohutohu Matua – Kaupapa Ture

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**From:** [Frances Aiken](#)  
**To:** [x@xx](#); [Ephraim Wilson](#)  
**Subject:** Update on Data and Statistics Bill - responses to feedback and Ministerial consultation  
**Date:** Thursday, 5 August 2021 12:55:11 pm

---

Kia ora,

Thank you for your feedback on the Data and Statistics Bill and Cabinet paper. We are continuing to work through the comments, and will be back in touch with individual agencies to respond more fully as soon as possible.

We are expecting to get the next version of the Bill back from PCO on Monday, and will provide the provisions that update other agency legislation to those agencies shortly after. Ministerial consultation on the Bill and Cabinet paper will begin on Thursday 12 August 2021 – please let us know if you would like the updated version of the Bill sent directly to you as well.

Ngā mihi,

**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)

## About Aotearoa, for Aotearoa

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**From:** [Peter Mee](#)  
**To:** [Ewan Lincoln](#); [Ephraim Wilson](#)  
**Subject:** RE: Updated Data and Statistics Bill and Cabinet paper  
**Date:** Wednesday, 18 August 2021 3:50:13 pm  
**Attachments:** [image005.jpg](#)  
[image006.jpg](#)  
[image007.jpg](#)  
[image008.png](#)  
[image009.jpg](#)

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Thanks both.

**Peter Mee (he/him)**

Manager, Policy

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**From:** Ewan Lincoln <[xxxx.xxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxxxxx.xxx.xx)>  
**Sent:** Wednesday, 18 August 2021 3:45 pm  
**To:** Ephraim Wilson <[xxxxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxx.xxxxxx@xxxxxxxx.xxx.xx)>; Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>  
**Subject:** RE: Updated Data and Statistics Bill and Cabinet paper

Thanks Ephraim. I'm OK with their answer to the historical records question. Overall, I think we've done all we can on this Bill, and Stats NZ has given adequate consideration to the points we've made.

Ephraim, are you OK to just go back to Stats NZ to thank them for their response?

---

**From:** Ephraim Wilson <[xxxxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxx.xxxxxx@xxxxxxxx.xxx.xx)>  
**Sent:** Wednesday, 18 August 2021 2:52 pm  
**To:** Ewan Lincoln <[xxxx.xxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxxxxx.xxx.xx)>; Peter Mee <[xxxxx.xxx@xxxxxxxx.xxx.xx](mailto:xxxxx.xxx@xxxxxxxx.xxx.xx)>  
**Subject:** RE: Updated Data and Statistics Bill and Cabinet paper

Hi both

I've reviewed their email and consider that their answers (bar those made in regard to historical records which I'll wait for you Ewan to review) are satisfactory.

Cheers  
Ephraim

**Ephraim Wilson**  
Policy Adviser

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**From:** Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>

**Sent:** Wednesday, 18 August 2021 11:02 am

**To:** Ephraim Wilson <[Ephraim.Wilson@privacy.org.nz](mailto:Ephraim.Wilson@privacy.org.nz)>; Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>

**Subject:** RE: Updated Data and Statistics Bill and Cabinet paper

Hi Peter and Ephraim

I'm happy to leave this to Ephraim to consider – I'll just have another look at the point about historical records, which I'm still a bit puzzled about.

Ewan

---

**From:** Ephraim Wilson <[Ephraim.Wilson@privacy.org.nz](mailto:Ephraim.Wilson@privacy.org.nz)>

**Sent:** Wednesday, 18 August 2021 10:27 am

**To:** Peter Mee <[Peter.Mee@privacy.org.nz](mailto:Peter.Mee@privacy.org.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>

**Subject:** RE: Updated Data and Statistics Bill and Cabinet paper

Hi Peter

My feeling at this point is that their explanation is OK – but I'm going to come back to this after I've done this [REDACTED] work which I'm planning to get out the door today (subject to your imprimatur).

Re the references to the Privacy Act, that is not a major concern to me. We wanted to understand the relationship between the PA and this Bill which they have explained a bit more below. But as I say, I'll come back and do a fuller review.

Cheers

Ephraim

**Ephraim Wilson**

Policy Adviser

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

PO Box 10094, The Terrace, Wellington 6143

T [REDACTED]

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**From:** Peter Mee <[xxxxx.xxx@xxxxxxxx.xxx.xx](mailto:xxxxx.xxx@xxxxxxxx.xxx.xx)>

**Sent:** Wednesday, 18 August 2021 10:20 am

**To:** Ephraim Wilson <[xxxxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxx.xxxxxx@xxxxxxxx.xxx.xx)>; Ewan Lincoln <[xxxx.xxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxxxxx.xxx.xx)>

**Subject:** FW: Updated Data and Statistics Bill and Cabinet paper

Hello both,

How do you feel about the responses/changes (or lack of) below? I'm curious as to the lack of specific reference to the Privacy Act, which seems like it would have been a relatively light touch drafting addition. Thoughts?

Cheers,

**Peter Mee (he/him)**

Manager, Policy

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

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---

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

**Sent:** Tuesday, 17 August 2021 2:17 pm

**To:** Ephraim Wilson <[xxxxxxxx.xxxxxx@xxxxxxxx.xxx.xx](mailto:xxxxxxxx.xxxxxx@xxxxxxxx.xxx.xx)>; Ewan Lincoln <[xxxx.xxxxxxx@xxxxxxxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxxxxx.xxx.xx)>;

Peter Mee <[xxxxx.xxx@xxxxxxxx.xxx.xx](mailto:xxxxx.xxx@xxxxxxxx.xxx.xx)>

**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

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**From:** [Ephraim Wilson](#)  
**To:** [Frances Aiken](#); [Ewan Lincoln](#); [Peter Mee](#)  
**Subject:** RE: Updated Data and Statistics Bill and Cabinet paper  
**Date:** Wednesday, 18 August 2021 5:35:00 pm  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.png](#)

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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 <[xxxxxxx.xxxxxx@xxxxxxx.xxx.xx](mailto:xxxxxxx.xxxxxx@xxxxxxx.xxx.xx)>  
**Sent:** Tuesday, 17 August 2021 2:17 pm  
**To:** Ephraim Wilson <[xxxxxxx.xxxxxx@xxxxxxx.xxx.xx](mailto:xxxxxxx.xxxxxx@xxxxxxx.xxx.xx)>; Ewan Lincoln <[Ewan.Lincxxx@xxxxxxx.xxx.xx](mailto:Ewan.Lincxxx@xxxxxxx.xxx.xx)>; Peter Mee <[xxxxxx.xxx@xxxxxxx.xxx.xx](mailto:xxxxxx.xxx@xxxxxxx.xxx.xx)>  
**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  
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## Ephraim Wilson

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**From:** Liz MacPherson  
**Sent:** Wednesday, 6 April 2022 9:56 am  
**To:** 'Craig Jones'  
**Cc:** Emmett Geoghegan; Ewan Lincoln; Ephraim Wilson; Joanna Hayward  
**Subject:** RE: Privacy Commissioner's Submission to the Governance and Administration Committee on the Data and Statistics Bill (81-1)

Thanks Craig. Happy to talk things through or provide assistance with drafting suggestions if that is helpful. Probably best to come through me in the first instance and I will find the right people to for the team to talk with. Take care - Liz

---

**From:** Craig Jones <Craig.Jones@stats.govt.nz>  
**Sent:** Tuesday, April 5, 2022 10:32 PM  
**To:** Liz MacPherson <Liz.MacPherson@privacy.org.nz>  
**Cc:** Emmett Geoghegan <emmett.geoghegan@stats.govt.nz>; Ewan Lincoln <Ewan.Lincoln@privacy.org.nz>; Ephraim Wilson <Ephraim.Wilson@privacy.org.nz>  
**Subject:** RE: Privacy Commissioner's Submission to the Governance and Administration Committee on the Data and Statistics Bill (81-1)

Kia ora Liz

Thanks for sending this through. I've asked the team to take a look and come back to me. Depending on where we get to, it may be a good option to take you up on your offer of a discussion with Emmett and team.

Ngā mihi  
Craig

---

**From:** Liz MacPherson <[Liz.MacPherson@privacy.org.nz](mailto:Liz.MacPherson@privacy.org.nz)>  
**Sent:** Tuesday, 5 April 2022 9:34 pm  
**To:** Craig Jones <[Craig.Jones@stats.govt.nz](mailto:Craig.Jones@stats.govt.nz)>  
**Cc:** Emmett Geoghegan <[emmett.geoghegan@stats.govt.nz](mailto:emmett.geoghegan@stats.govt.nz)>; Ewan Lincoln <[Ewan.Lincoln@privacy.org.nz](mailto:Ewan.Lincoln@privacy.org.nz)>; Ephraim Wilson <[ephraim.wilson@privacy.org.nz](mailto:ephraim.wilson@privacy.org.nz)>  
**Subject:** FW: Privacy Commissioner's Submission to the Governance and Administration Committee on the Data and Statistics Bill (81-1)

Kia ora Craig

As discussed, attached please find a copy of our submission to the Governance and Administration Select Committee on the Data and Statistics Bill. As discussed, we had not intended to submit on the Bill given our engagement on the Bill, our general comfort with the Bill's design from a privacy perspective and our expectation that Stats NZ would continue to engage with OPC as the Bill was given operational effect. However, in light of the privacy concerns that have been raised by some submission and in the media about aspects of the Bill, we determined that it would be appropriate to make a submission outlining OPC's position on how the Bill deals with privacy. It sets out our broad comfort with the adequacy of safeguards in the Bill to protect individual privacy, while also proposing some additional safeguards for the Committee's consideration which OPC considers will strengthen trust and confidence in regulatory framework the Bill establishes.

We are happy to discuss any of these points with you or your team.

Also as discussed, we also have an OIA from Thomas Beagle for any material related to our consideration of the Data and Statistics Bill which we would like to consult you on over the next few days. As noted our aim is to get a response back to Mr Beagle before Easter.

Thanks again for the conversation this afternoon and my apologies for the lateness of this submission.

Take care

Liz

**Liz MacPherson (she/her)**

Deputy Privacy Commissioner (Acting Privacy Commissioner)

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**From:** Liz MacPherson

**Sent:** Tuesday, April 5, 2022 8:58 PM

**To:** 'ga@parliament.govt.nz' <[ga@parliament.govt.nz](mailto:ga@parliament.govt.nz)>

**Subject:** Privacy Commissioner's Submission to the Governance and Administration Committee on the Data and Statistics Bill (81-1)

Kia ora koutou

Attached please find the Privacy Commissioner's submission on the Data and Statistics Bill (81-1).

I thank the Governance and Administration Committee for accepting and considering this late submission.

**Liz MacPherson (she/her)**

Deputy Privacy Commissioner (Acting Privacy Commissioner)

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## Privacy Commissioner's Submission to the Governance and Administration Committee on the Data and Statistics Bill (81-1)

### Introduction

1. The Data and Statistics Bill (the Bill) repeals the Statistics Act 1975 (the 1975 Act) and replaces it with a new Data and Statistics Act. The Bill is intended to modernise how data and official statistics are collected, held and published by government.
2. The Privacy Act 2020 is New Zealand's main privacy law. One of my functions as Privacy Commissioner under the Privacy Act is to examine legislation before Parliament and to consider any matters affecting individuals' privacy.
3. The collection and use of data and official statistics by public agencies, including Statistics New Zealand (Stats NZ), often involves the collection, use, disclosure, and retention of personal information, so it is appropriate that I consider the potential impacts on individual privacy posed by the Bill.
4. As set out below, the Office of the Privacy Commissioner (OPC) has engaged with the policy development process that has led to the introduction of the Bill. On the basis of this close engagement, an overall comfort with the Bill's design from a privacy perspective, and an expectation that Stats NZ would continue to engage with OPC as the Bill was given operational effect, it was determined that OPC did not need to submit on the Bill.
5. However, in light of privacy concerns that have been raised in some submissions and in the media about aspects of the Bill, this submission outlines my position on how the Bill deals with privacy. It sets out my broad comfort with the adequacy of safeguards in the Bill to protect individual privacy, while also proposing some additional safeguards for the Committee's consideration. I thank the Committee for considering this late submission.

### Office of the Privacy Commissioner involvement in the development of the Bill

6. Under then Privacy Commissioner John Edwards, OPC engaged with Stats NZ throughout the development of the Bill. This engagement included:
  - submitting on the Stats NZ discussion document *Towards New Data and Statistics Legislation* in 2018
  - reviewing and commenting on Cabinet papers on policy decisions in 2020-21
  - reviewing and commenting on the draft Bill in 2021.
7. During this engagement, the Privacy Commissioner and OPC:
  - supported modernisation of data and statistics legislation
  - indicated broad comfort with proposed privacy protections and transparency requirements in the legislation
  - worked through specific feedback on the Bill with Stats NZ

- noted OPC's willingness to work with Stats NZ on policy and operational matters relating to the Bill.

8. Having contributed to this policy process, OPC has no significant concerns about the Bill as introduced, for reasons set out in this submission. However, in response to concerns raised by others, the submission does propose some additional safeguards that could be included in the Bill.

### **Relationship between statistics legislation and the Privacy Act**

9. The production of official statistics necessarily involves the collection, storage and analysis of large quantities of personal information. Legislative authorisation of this collection and use of personal information establishes a statutory framework that is largely separate from the Privacy Act, and that overrides the Privacy Act to a significant extent. This relationship between the Privacy Act and statistics legislation already existed under the Statistics Act 1975 and the Privacy Act 1993. It has not been changed by the passing of the Privacy Act 2020, nor would it be changed by the enactment of the Bill.

10. There is nothing unusual about other legislation overriding provisions of the Privacy Act.<sup>1</sup> When reviewing proposals for such statutory overrides, the Privacy Commissioner must consider:

- whether the policy objective the proposal seeks to achieve justifies a departure from the protections in the Privacy Act
- what other safeguards will be put in place to mitigate the impacts on privacy.

11. A separate legislative framework for the use of personal information for official statistics, partially taking the place of protections for personal information in privacy legislation, is consistent with statistical legislation around the world. I consider that this approach is justified on the basis that:

- official statistics and research based on information held for statistical purposes have significant public benefit by helping us to understand our society and allowing government to plan for the implementation of effective policies and services
- statistical legislation, policies and practice involve strict protections for the confidentiality of information collected for statistical purposes, while also providing transparency about what is done with this information.

12. The important role of statistics and research is also recognised in the Privacy Act itself. Information privacy principles in the Privacy Act that place limits on the collection, use and disclosure of personal information provide exceptions 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.

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<sup>1</sup> Section 24 of the Privacy Act 2020 provides that the information privacy principles in the Privacy Act will not be breached if personal information is handled in ways that are authorised or required by other laws.

13. To the extent that the Bill clearly authorises personal information to be collected, held, used and disclosed, it will override restrictions in the information privacy principles in the Privacy Act. This is not to say, however, that the Bill completely displaces the Privacy Act. On the contrary, my assumption is that the Privacy Act will continue to apply to personal information collected for statistical purposes where the Bill does not provide otherwise. For example:
- the requirements under the Privacy Act to notify OPC and affected individuals of privacy breaches affecting statistical data that is personal information will apply
  - an agency could still breach information privacy principle 10 of the Privacy Act if it requested personal information on behalf of the Statistician and used that data for its own purposes without other statutory authority
  - individuals could still request their personal information held by Stats NZ, or any other agency covered by the Bill regulatory framework established by the Bill, under information privacy principle 6 of the Privacy Act.<sup>2</sup>
14. I comment further on the interaction with the Privacy Act in my proposals for additional privacy safeguards below.

### **Reasons for supporting the Bill**

15. Former Privacy Commissioner John Edwards supported the development of the Bill and its objective of modernising the legislative framework governing the data and statistics system, while ensuring that information collected for statistical purposes continues to be subject to strict confidentiality. I also support this objective.
16. The collection and use of information for official statistics and research has changed significantly since the 1975 Act was passed, as a result of technological and other developments. As Stats NZ has adopted new approaches to collecting and analysing data, OPC has engaged with Stats NZ as necessary to ensure that privacy is protected. Successive Privacy Commissioners and OPC have been broadly comfortable with the protections in the 1975 Act and the strong culture of confidentiality at Stats NZ.
17. For example, early in his tenure as Privacy Commissioner, John Edwards wrote this about the Integrated Data Infrastructure (IDI), a research database managed by Stats NZ:

My office has cautiously supported the expansion of the IDI, although not in an unqualified way.

The IDI expansion represents something of a grand bargain – consolidate the collection of integrated data sets in one place under a strong governance regime, including a very clear statutory mandate and controls – or the alternative is the piecemeal integration of data by various government agencies under potentially inconsistent controls.

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<sup>2</sup> On this point, I note that clause 39 allows the Statistician to disclose data in a form that may identify an individual if the disclosure is authorised in writing by the individual to whom the data relates.

Our confidence is based on our experience and knowledge of Statistics New Zealand's existing management of the IDI. This includes its long established culture of confidentiality and respect for data subjects which has led to its acceptance in the community as a trusted custodian of statistical data.<sup>3</sup>

18. It is now appropriate to modernise the data and statistics legislation to take account of changes that have occurred since 1975, such as the collection of statistical information by government agencies other than Stats NZ, the increasing use of administrative data for statistical purposes, and the use of information held by Stats NZ for beneficial research by other individuals and organisations. The Bill will bring greater transparency to developments such as these, which already take place under the 1975 Act.
19. I am satisfied that the Bill contains adequate protections against the inappropriate use of personal information. These protections include:
  - an overall purpose of providing for appropriate privacy, confidentiality, and security, and transparency about how data is used (cl 3(d))
  - a prohibition on the disclosure of identifiable information collected in joint collections between Stats NZ and another agency (cl 24(6))
  - a clear provision that, when a public sector agency is authorised to request data on behalf of the Statistician, that agency is not authorised to use that data (cl 26(4))
  - a requirement on the Statistician to take all reasonable steps to ensure that data is not disclosed in a form that could reasonably be expected to identify individuals (unless certain appropriate exceptions apply) (cl 39)
  - requirements for employees of Stats NZ and other relevant individuals (including those seeking to access data for research) to complete a certificate of confidentiality (cl 42)
  - a clear framework for access to data held by Stats NZ for research purposes (Part 5), including that the Statistician, before authorising access to data for research, must:
    - be satisfied the research is in the public interest (cl 49)
    - be satisfied the research is to be carried out by an appropriate researcher, who will protect the privacy, confidentiality and security of the data (cl 50, especially cl 50(a)(iii))
    - be satisfied access to data is subject to appropriate measures to protect privacy, confidentiality and security of data (cl 51)
    - consider whether, if the researcher is an overseas person, the data will be protected by comparable safeguards to those in the Bill (cl 52)

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<sup>3</sup> John Edwards, 'Privacy and Big Data', presentation to Ministry of Social Development, 2 September 2014.



and that the Statistician must publish information about access to data by researchers (cl 53)

- a requirement that researchers must comply with obligations in relation to data accessed for research, including to take all reasonable steps to ensure that data is only disclosed in a form that could not reasonably be expected to identify individuals (cl 54, especially cl 54(1)(c)).

### **Additional privacy protections that could be considered**

20. While I support the Bill and believe it includes appropriate protections for personal information, there are additional protections the Committee could consider in response to concerns that have been raised about the Bill.

#### *Interaction with the Privacy Act*

21. As discussed above, I assume that the Privacy Act will continue to apply except to the extent that the Bill clearly authorises personal information to be collected, held, used or disclosed. However, to avoid doubt, it could be helpful for the Bill to expressly set out the relationship between the Bill and the Privacy Act.
22. In addition, I note that the Bill does not deal with situations in which individuals may suffer harm, of the kinds set out in section 69(2)(b) of the Privacy Act, as a result of breaches of the requirements of the Bill. The Bill provides for offences relating to the obligation to protect data. However, it does not provide for redress to individuals affected by a failure to meet obligations to protect data.
23. The Committee could consider whether the Bill should provide for a right for individuals to make a complaint to the Privacy Commissioner in relation to a breach of obligations to protect data under the Bill, where the breach relates to personal information as defined in the Privacy Act.

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

24. Clause 17 of the Bill provides that the Statistician may delegate any of the Statistician's functions or powers, in accordance with the provisions of the Public Service Act 2020 relating to the delegation of functions and powers of public service chief executives. It is not clear why such broad provision has been made for delegation of the Statistician's functions and powers, and the Committee may wish to ask officials for further information about the purpose of this provision.
25. In addition, clauses 25 and 26 provide for the Statistician to authorise a public sector agency to request data on the Statistician's behalf. This is also a type of delegation of the Statistician's powers.
26. I recognise that anyone acting under delegation or authorisation from the Statistician would be subject to the same legal obligations that apply to the Statistician. However, such a person would not necessarily come from the same strong culture of confidentiality as is found within Stats NZ. There is a risk, however small, that a person acting under

delegation would perform the Statistician's functions in ways that do not sufficiently protect the privacy and confidentiality of data.

27. I therefore propose as a safeguard that the Bill should require the Statistician, before delegating functions, powers or authorities to any agency outside Stats NZ, to be satisfied that the agency has the capability to perform the functions or powers safely and responsibly. Further, I propose that the Bill provide for the Statistician to develop an assurance framework for assessing an agency's capability in relation to delegation of functions or powers, and that the Statistician must consult the Privacy Commissioner about the assurance framework.

*Limitation on the purposes for which information may be used*

28. It is my strong expectation and understanding that any information collected under authority provided by the Bill will be used only for statistical and research purposes. It would be entirely inappropriate to use such information, where it relates to identifiable individuals, for operational, compliance or enforcement purposes (even if these purposes were considered beneficial to the individuals concerned).
29. In my view, the Bill's provisions, taken as a whole, do protect against use of information collected under the Bill for purposes other than the production of statistics and the undertaking of research. However, there is no single provision that clearly states this purpose limitation, in contrast to the 1975 Act, which states that 'Information furnished to the Statistician under this Act shall only be used for statistical purposes'.<sup>4</sup>
30. I would support the inclusion in the Bill of a stand-alone provision restricting the purposes for which data collected under the Bill may be used to statistical and research purposes. I do not propose defining the terms 'statistical' or 'research', which are also undefined in the statistical and research exception in the Privacy Act. I believe the terms 'statistical' and 'statistics' are well understood in New Zealand and internationally. The term 'research' is admittedly broader, but could be clarified in part by research standards issued by the Statistician under clause 90(1)(d).
31. I also note that the 'Five Safes' framework that governs research access to the IDI specifically states that such data 'cannot be used for individual case management, such as making a decision about a specific person or family'. The Committee could consider whether a similar restriction (suitably broadened beyond case management to any decision-making about identifiable individuals) should be included in the Bill.
32. As a more general comment, the Bill's explanatory note comments that the Bill incorporates aspects of best practice frameworks, including the 'Five Safes' and Ngā Tikanga Paihere (Stats NZ's framework for ethical and culturally appropriate data use). However, there may still be elements of those frameworks that could be incorporated into the Bill to strengthen its privacy and ethical protections. For example, Stats NZ has developed the practice, applauded by overseas privacy regulators as best practice, of

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<sup>4</sup> Statistics Act 1975, s 37(1).

undertaking and publishing a privacy impact assessment when new data is added to the IDI.

*Applying the ‘public interest’ test to research requests*

33. Clause 48 of the Bill gives the Statistician sole discretion to authorise or decline access for research to data held by Stats NZ, and to impose conditions on such access. A key consideration in deciding whether to grant access is the public interest test in clause 49. The public interest test ensures consideration of matters that are important from a privacy perspective, including whether the proposed access to information (which could include access to information about identifiable individuals) is justified, the nature and extent of any risk posed by access, and the purpose for which the data was originally collected.
34. In exercising this discretion, I would expect the Statistician to take advice from experts in data ethics, tikanga Māori, privacy and other relevant areas of expertise. It could be helpful for the Bill to provide for the creation of a research ethics committee to advise the Statistician on decision-making under clause 48, particularly (but not exclusively) in relation to the application of the public interest test. The Bill could also provide in general terms for the composition of such a committee. Such a committee should also provide advice to chief executives of other departments that the Statistician has determined may authorise access for research purposes under clause 55.

*Strengthening some wording in the Bill’s requirements*

35. It may be possible to tighten up some of the wording in the Bill to be more protective, particularly where the current wording might be seen as weakening requirements in the 1975 Act. I make two specific suggestions, on which the Committee may wish to seek advice from officials.
36. First, the Bill refers in a number of places to the Statistician obtaining information that is ‘*necessary or desirable*’ for the production of official statistics, or ‘*desirable*’ for research purposes.<sup>5</sup> I propose that the test should be stronger than simple desirability of collecting information, and that the words ‘*necessary or desirable*’ and ‘*desirable*’ be replaced by ‘*necessary*’. A necessity test would be particularly appropriate where a data request is not voluntary, and especially in relation to the power of entry and inspection under clauses 57 and 58.
37. Second, clause 39 provides that the Statistician ‘*must take all reasonable steps to ensure that the Statistician does not publish or otherwise disclose data in a form that could reasonably be expected to identify any individual or organisation.*’ Equivalent wording also appears elsewhere in the Bill. By contrast, section 37(4) of the 1975 Act requires the Statistician to ensure that statistical information is published ‘*in such a manner as to prevent any particulars published from being identifiable by any person (other than the person by whom those particulars were supplied)*’.

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<sup>5</sup> See clauses 22(c), 23(1)(b), 25(1), 57(1) and 58(1).

38. The wording in the 1975 Act with regard to non-identifiability is arguably stronger than that in the Bill, and the Committee could consider whether the wording in the Bill could be strengthened. However, the Committee should be aware that the wording in the Bill closely mirrors that in the statistical and research exceptions in the Privacy Act.<sup>6</sup> The Committee could also consider whether it may be more appropriate to provide greater specificity about how statistical information should be made non-identifiable through Standards issued by the Statistician under clause 90 of the Bill.

## Conclusion

39. I support the Bill's objectives of modernising data and statistics legislation while continuing to provide safeguards for information collected for statistical purposes and to ensure transparency about the use of such information. I believe the Bill already contains important safeguards that have the effect of protecting privacy of personal information. I also expect Stats NZ to continue to engage with OPC about implementation of the Bill, if it is enacted.
40. However, to respond to concerns that have been raised about the Bill and help to ensure continued public trust in the collection and use of data for official statistics and research, I propose the following additional safeguards for the Committee's consideration as possible amendments to the Bill:
- Clarify the Bill's relationship with the Privacy Act and provide for individuals to complain to the Privacy Commissioner about failure to meet obligations to protect data under the Bill, where such data is personal information.
  - Require the Statistician, before delegating functions, powers or authorities to any agency outside Stats NZ, to be satisfied that the agency has the capability to perform the functions or powers safely and responsibly. Further require the Statistician, in consultation with the Privacy Commissioner, to develop an assurance framework for assessing such capability.
  - Restrict the purposes for which data collected under the Bill may be used to statistical and research purposes, and provide that information collected under the Bill cannot be used to make decisions about specific identifiable individuals.
  - Provide for the creation of a research ethics committee to advise the Statistician on the exercise of the Statistician's discretion to authorise access to data for research (especially in relation to the public interest test for such access).
  - Replace references in the Bill to a 'necessary or desirable' or 'desirable' test for obtaining information with 'necessary', particularly where it is mandatory to provide information and in relation to powers of entry and inspection. Also consider

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<sup>6</sup> The Privacy Commissioner has previously recommended that the Privacy Act should include stronger protections against re-identification of personal information that has been de-identified for statistical and research purposes: Privacy Commissioner's submission on the Privacy Bill to the Justice and Electoral Committee, 31 May 2018, pp 22-25 and rec A.4.

whether the Bill's wording on non-identifiability of information should be strengthened.

41. I trust my comments are of use to the Committee in its consideration of the Bill. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.



Liz MacPherson  
**Acting Privacy Commissioner**  
5 April 2022