

# Departmental Disclosure Statement

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Data and Statistics Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Stats NZ.

Stats NZ certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 September 2021.

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## Part One: General Policy Statement

### General Policy Statement

Data and statistics, and the insights generated from them, are critical to effective democracy, decision-making and accountability. Data and statistics inform public policy decisions, resource allocation, and service design and delivery. They are relied on to guide decisions made by individuals, families, communities, iwi and Māori organisations, businesses, local government and other organisations.

This Bill repeals the Statistics Act 1975 (the 1975 Act) and replaces it with a new Data and Statistics Act. The Bill is informed by a review of statistics legislation and public consultation on high-level proposals for new data and statistics legislation.

The 1975 Act constrains the ability to create efficiencies through using existing government-held data, and fails to drive a system-wide approach to addressing data gaps and improving data quality. The Government Statistician has limited tools to identify and prioritise data and statistics across government.

The 1975 Act was designed for a largely paper-based environment and has not kept pace with modern legislation or data development. The Act—

- does not have the flexibility to respond to advances in digital and data technology and changing data needs and sources;
- is silent on the Māori-Crown relationship and the responsibility of the Crown to meet its obligations under te Tiriti o Waitangi/the Treaty of Waitangi.

It can take time and effort to determine what is and is not permissible under the 1975 Act, resulting in a gradual erosion of system integrity and resilience. This increases the likelihood of failure in the system and significant loss of trust and confidence, domestically and internationally.

In order to address these issues, the Bill does the following things:

- recognises the Crown's responsibility to consider and provide for Māori interests in data and statistics;
- enables more effective system leadership;
- strengthens and future-proofs the framework for collecting data for official statistics;
- modernises the framework for accessing data for research; and
- continues to provide appropriate safeguards and protections to ensure public trust and confidence in the collection and use of data for official statistics and research.

The Bill also amends a number of Acts to:

- remove barriers to the provision of data to Stats NZ, and
- provide for equivalent Stats NZ products to be used where specified products are substituted or discontinued.

### Recognise the Crown's responsibility to consider and provide for Māori interests in data and statistics

The 1975 Act is silent on the te Tiriti o Waitangi/the Treaty of Waitangi and the Māori-Crown relationship. The Bill recognises and respects the Crown's responsibility to give

effect to the te Tiriti o Waitangi/the Treaty of Waitangi by recognising the interests of Māori (including iwi and hapū)—

- in the collection of data, the production of statistics, and access to and use of data for research as tools for furthering Māori economic, social, cultural, and environmental wellbeing, and
- in the way in which data is collected, managed and used for the production of official statistics and research.

The Bill includes principles for engaging with Māori including that it must be early and meaningful, should include early discussion of the most effective ways of engaging, and should include consideration of opportunities for partnering.

The Bill places duties on the Government Statistician to:

- recognise and respect the Crown's responsibility to give effect to the te Tiriti o Waitangi/the Treaty of Waitangi by recognising the interests of Māori when performing their functions under this Act;
- build and maintain Stats NZ's capability and capacity to
  - understand te Tiriti o Waitangi/the Treaty of Waitangi and the perspectives of Māori, and
  - engage with Māori about collecting data, producing official statistics, and using data for research ;
- foster the capability and capacity of Māori to collect and use data for statistics and research, and engage with the Government Statistician;
- engage with Māori:
  - when preparing the multi-year data and statistics work programme;
  - before determining how the census of population and dwellings will be taken and what data will be collected; and
  - before providing written standards.

The criteria and requirements to be used by the Government Statistician when authorising access to data for research are designed to reflect Māori interests in the use of data for research.

### **Enable more effective system leadership and co-ordination**

The 1975 Act recognises the need for, but does not adequately provide for, coordination and management of the system across government. Its narrow focus on collecting data via statistical surveys has resulted in insufficient tools for ensuring the supply and quality of administrative data used for producing official statistics.

The Minister of Statistics will continue to have responsibility for specifying data and statistical priorities, approving a multi-year data and statistical programme, and making decisions about what statistics must be produced. The Government Statistician will continue to co-ordinate and ensure best practice across the system, but with additional leadership functions, including establishing and maintaining a multi-year data and statistical programme.

The Bill places new statutory obligations on public sector agencies, including to

- follow any applicable standards issued by the Government Statistician; and
- consult the Government Statistician before making changes to data collections that could affect statistical production or data that is made available for research.

## **Strengthen and future-proof the framework for collecting data for official statistics**

The 1975 Act has a strong focus on collecting data for official statistics via statistical surveys, and places obligations on respondents to respond to any mandatory request for data that is made via a survey. Additionally, many of the provisions about the collection of census data are overly prescriptive and reflect a 1970s New Zealand society that bears little resemblance to 21<sup>st</sup> Century New Zealand. There are very few tools to ensure continuity of supply of other data sources, such as administrative data collected across government that are critical for producing official statistics.

The Bill will continue the requirement that the Minister of Statistics approve any mandatory request for data. It creates a new framework to support data collection for producing official statistics by:

- enabling the Government Statistician to make a mandatory request for data in the most appropriate format and from the most appropriate person or source (meaning that the Government Statistician can require provision of any data including administrative data collected by government agencies, businesses and other organisations);
- clarifying that the obligation to provide data for official statistics applies whenever a mandatory data request is made;
- clarifying that the Government Statistician can authorise other agencies to collect data on their behalf for the production of official statistics;
- modernising Census data collection provisions and aligning with general data collection provisions for official statistics, and requiring the Government Statistician to conduct a review of the operation of each census; and
- removing barriers in other legislation that prohibit or restrict the provision of data to the Government Statistician for official statistics.

## **Modernise the framework for accessing data for research**

The 1975 Act includes a framework for bona fide researchers to safely access data held by Stats NZ for research in the public interest. The framework does not:

- reflect Māori interests in the use of data for research;
- provide sufficient guidance for decision-making related to accessing data; and
- require transparency about who is using government-held data, how it is being used, what it is being used for, and how it is being managed.

The Bill will modernise the framework for accessing data held by Stats NZ by:

- incorporating domestic and international best practice frameworks for appropriate and safe access, such as Ngā Tikanga Paihere and the five-safes framework;
- ensuring appropriate protections and safeguards when data is being accessed for research;
- providing for additional safeguards when overseas-based researchers access data;
- requiring the Government Statistician to publish information about who is accessing data, how the data is being accessed and for what purposes; and
- requiring researchers to publish research results and methodologies.

Other agencies will be able to adopt the research access framework, with the agreement of the Government Statistician.

### **Continue to provide appropriate safeguards and protections to ensure public trust and confidence in the collection and use of data for official statistics and research**

The Bill will continue to provide appropriate protections and safeguards to protect the interests of the people, communities, and organisations represented in, or by, the data Stats NZ collects for official statistics and research.

The Bill:

- continues to provide for statistical confidentiality (the internationally recognised requirement to not publish or disclose data in a form that could identify a person or organisation), with a modernised set of exceptions;
- replaces the 1975 Act's statutory declaration of secrecy with a modern, fit for purpose certificate of confidentiality;
- continues statutory obligations to
  - provide data for official statistics when required to do so, and
  - keep data safe and use it appropriately;
- modernises and updates offences and penalties associated with a failure to comply with the statutory obligations, including new enforcement tools to enable a proportionate response to non-compliance.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
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Impact Assessment: New Data and Statistics Legislation, Stats NZ, 2020.

Available at:

- <https://www.stats.govt.nz/assets/Uploads/Corporate/Cabinet-papers/New-data-and-statistics-legislation-policy-proposals/Data-and-Statistics-Legislation-Paper-Regulatory-Impact-Assessment-.pdf>
- <https://www.treasury.govt.nz/publications/risa/regulatory-impact-assessment-new-data-and-statistics-legislation>

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
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Stats NZ convened a cross-agency Quality Assurance Panel with representatives from Stats NZ, Treasury and the Ministry of Justice. The panel was chaired by a senior official from the Ministry of Justice.

The cross-agency Quality Assurance Panel reviewed the Regulatory Impact Assessment (RIA) "New data and statistics legislation" dated February 2020 produced by Stats NZ. The panel considered that the RIA met the quality assurance criteria.

The panel noted the importance of the future work outlined in the RIA to confirm the level of penalties before the Bill is introduced.

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>No</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>No</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>Yes</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>No</b>
A summary of analysis on the size of the potential costs and benefits can be found in table 5.2 of the Regulatory Impact Assessment.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The Bill does not create new obligations – but continues existing obligations on individuals and organisations to provide data requested by the Government Statistician for the production of official statistics.</p> <p>The Bill clarifies that the obligation to provide data exists whenever the Government Statistician makes a mandatory request. This will facilitate the collection of data and clarify the obligations of regulated parties. Over time, the policy package may reduce the burden of providing data as the quality and accessibility of administrative data increases.</p> <p>The Bill also provides for</p> <ul style="list-style-type: none"> <li>• an infringement notice regime to address low-level non-compliance with the obligation to provide data for official statistics, and</li> <li>• an enforceable compliance notice regime to address low-level non-compliance with obligations on researchers to safeguard and appropriately use data.</li> </ul> <p>These tools will enable Stats NZ to undertake proportionate responses to non-compliance. Stats NZ's compliance approach will continue to be based on encouragement, support, assistance and motivation to comply with obligations. New enforcement tools will provide additional avenues to support this approach, where appropriate.</p> <p>More information on (a) and (b) can be found in sections 3 and 4 of the Regulatory Impact Assessment.</p>	



## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
<p>The Bill aligns with the United Nations Fundamental Principles of Official Statistics, adopted by the United Nations General Assembly and endorsed by New Zealand.</p> <p>The Bill also draws from a range of domestic and international best practice expectations. More on this can be found in Section C of the Regulatory Impact Assessment.</p>

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
<p>The 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, has informed Stats NZ's approach to recognising and respecting the Crown's responsibility to Māori in the Bill.</p> <p>Stats NZ has engaged across government to ensure that the Bill appropriately recognises and respects the Māori-Crown relationship. The Bill includes principles for engagement with Māori and places specific duties on the Government Statistician relating to te Tiriti o Waitangi/the Treaty of Waitangi.</p> <p>Stats NZ has also tested draft provisions with the Data Iwi Leaders Group, and consulted more broadly on the provisions with government agencies.</p>

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>NO</b>
<p>Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be available on the Ministry's website at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/</a></p>	

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>The compliance and enforcement regime of the Statistics Act 1975 is out of date and does not align with legislative or regulatory best practice.</p> <p>Part 6 of the Bill contains new and modernised offences and penalties that will:</p>	

- address serious non-compliance with the obligation to provide data, regardless of the format in which the data was requested and the provision of misleading information or omission of material information;
  - the maximum penalty for these offences is a fine of
    - \$2,000 in the case of an individual, and
    - \$12,000 in any other case
- more clearly set out the consequences for serious non-compliance with obligations to protect data and use data appropriately, and add in new offences to support new legislative requirements;
  - the maximum penalty for these offences is a fine of
    - \$5,000 in the case of an individual, and
    - \$15,000 in any other case
- address other types of obstructive or dishonest behaviour that could seriously damage the integrity of the data and statistics system or harm people or organisations
  - the maximum penalty for these offences is a fine of
    - \$5,000 in the case of an individual, and
    - \$15,000 in any other case.

The Bill will also contain the following new enforcement tools:

- **Infringement notices** to address low-level non-compliance with the obligation to provide data for official statistics;
  - Infringement fees may be prescribed in regulations, at a maximum of
    - \$1,000 for an individual;
    - \$3,000 in any other case.
  - Infringement fines (imposed by a court only) may not exceed
    - \$2,000 for an individual;
    - \$6,000 in any other case.
- **Enforceable compliance notices** to address low-level non-compliance with statutory obligations relating to accessing Stats NZ-held data for research,
  - Non-compliance with a compliance notice is a criminal offence, with a maximum fine of
    - \$5,000 in the case of an individual, and
    - \$15,000 in any other case.

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice was consulted prior to, and during, the review of offences and penalties, which include the new enforcement tools, and on draft offence provisions.</p> <p>The Ministry provided best practice advice and guidance on offences and penalties, which was used by Stats NZ in the creation of provisions for new and modernised offences and enforcement tools.</p>	

## Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The Bill continues to provide for the Government Statistician to collect data, including personal information, for official statistics and research.</p> <p>Stats NZ is required to keep the data it collects secure, with appropriate levels of privacy and confidentiality. Under clause 38, the Government Statistician must not publish or otherwise disclose data in a form that could reasonably be expected to identify any individual or organisation. This principle is known as statistical confidentiality. Clause 38 also sets out some exceptions to statistical confidentiality. Stats NZ may only disclose identifying data relating to an individual if that individual has consented to that disclosure.</p> <p>Approved researchers can access data held by Stats NZ, under the principles-based framework in Part 5 of the Bill. Before approving access to data, the Government Statistician must be satisfied that the proposed research is in the public interest, the researcher is appropriate, and access to data is subject to appropriate measures to protect privacy, confidentiality and security.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner has been consulted on policy proposals and draft legislation. No concerns have been raised.</p>	

## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p><u>Public consultation on high-level proposals for new data and statistics legislation</u></p> <p>From September to November 2018, Stats NZ gathered public feedback on high-level policy proposals in the discussion document “Towards new data and statistics legislation: Public discussion document”.</p> <p>A summary of submissions is available on the Stats NZ website.  <a href="https://www.stats.govt.nz/consultations/towards-new-data-and-statistics-legislation-summary-of-submissions-on-2018-consultation">https://www.stats.govt.nz/consultations/towards-new-data-and-statistics-legislation-summary-of-submissions-on-2018-consultation</a></p> <p><u>Agency consultation on policy proposals</u></p> <p>The proposals in the discussion document were refined in response to the feedback received during consultation, and further policy work undertaken. The final proposals were agreed by Cabinet in March 2020 and April 2021. Stats NZ consulted with all public service departments and selected Crown agents, and refinements were made to the policy proposals before Cabinet consideration.</p> <p><u>Consultation on the Bill</u></p> <p>All departments and some other agencies (eg, Accident Compensation Corporation and the Reserve Bank) were consulted on a draft of the Bill. Stats NZ also consulted with the Privacy Commissioner.</p> <p>Stats NZ obtained feedback from the Data Iwi Leaders Group on the provisions to reflect the Māori/Crown relationship and te Tiriti o Waitangi/the Treaty of Waitangi. Stats NZ also</p>	

discussed the draft provisions and Data Iwi Leaders Group's feedback with Te Arawhiti, the Ministry of Justice, Crown Law and Parliamentary Counsel Office.

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
<p>Clause 81 creates a strict liability offence, whereby a person commits an offence, who, without reasonable excuse, fails to comply with a compliance notice.</p> <p>Creating a strict liability offence is justifiable in this case. A person who is charged with this offence will have already received a notice to comply with their obligations to keep data safe and use it appropriately. The notice must state why a notice was issued, the requirement or prohibition imposed, when an action must be taken or stopped, any additional conditions, the consequences of non-compliance and the right of review.</p> <p>A person, having received a compliance notice, would have to wilfully not comply with the content and instruction of the notice before a charge was laid.</p> <p>Also, please note the creation of infringement offences at question 3.4</p>	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The Bill creates a power for the Governor-General to make regulations, by Order in Council, for the following purposes:</p> <ul style="list-style-type: none"><li>• prescribing fees for infringement offences</li><li>• prescribing maximum fines for infringement offences</li><li>• prescribing infringement notices and reminder notices</li><li>• prescribing the form of a search warrant</li><li>• providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.</li></ul> <p>The regulation making power is necessary in order to provide the technical detail supporting the establishment of infringement notices and the form of a search warrant. It is not appropriate to utilise Parliamentary time to scrutinise such matters of detail.</p>	

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>

