In Confidence

Office of the Minister of Statistics

Cabinet Economic Development Committee

Establishment of the Interim Centre for Data Ethics and Innovation

Proposal

1   I am progressing the establishment of an interim Centre for Data Ethics and Innovation as a crucial first step towards a formalised Centre in Aotearoa New Zealand. This paper seeks agreement to the interim Centre's overarching objective and work programme.

Relation to government priorities

2   The Centre supports Government's goals to foster the trusted and ethical use of data by government, as reflected in the refreshed mandate of the Government Chief Data Steward (GCDS), who is the system lead for data [GOV-22-MIN-0056 refers]. It is a foundational piece for building public trust and confidence, which in turn empowers institutions and agencies within the system to innovate with data.

3   This work is also linked to the *Digital Strategy for Aotearoa*. Released by the Government in 2022, the Strategy is a roadmap to help secure New Zealand's place as a world-leading, trusted, thriving digital nation. It outlines the need to have appropriate mechanisms in place to support safe and ethical data-driven innovation. It also signalled a potential Centre in its Action Plan, in support of the Strategy's Mahi Tika – Trust pillar.[1]

Executive Summary

4   Data use and data-driven technologies are evolving rapidly. These advances can enhance our lives in powerful and positive ways, but they also come with significant risks. One misstep with data can have a chilling effect across the whole system, inhibiting innovation and efforts to share data. We need to ensure that we have mechanisms in place to support safe and innovative uses of data. This is critical for building a secure, trusted data environment and improving the flow of data across the system.

5   To that end, the Government signalled the potential establishment of a Centre for Data Ethics in the Action Plan accompanying the *Digital Strategy for Aotearoa*. The pace of innovation in this space means we need to act quickly. I am therefore looking to make initial moves within the GCDS mandate by progressing the Centre in two phases. I am first standing up an interim Centre as a small unit within the function of the GCDS. The interim Centre will then

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transition to a formalised Centre with a wider mandate and a scaled-up work programme in a year's time.

6   I seek your agreement to the overarching objective and work programme for the interim Centre, which has been informed by stakeholder engagement. Engagement to date has established broad support for the Centre and a clear appetite for action in this space.

7   If endorsed by Cabinet, the interim Centre will lay the foundations for the formalised Centre. It will establish a presence, build key networks and define its role and its relationship with other players in the system. It will also support the design and establishment of the formalised Centre, including undertaking public engagement on its form, functions and forward work programme and working with relevant agencies to confirm its objectives.

8   I will report back to Cabinet in July 2024 to share the progress of the interim Centre's work programme, and to agree to the formalised Centre's form, objectives, functions, focus areas and outcomes framework.

Comment

Advances in the use and deployment of data have brought about unprecedented opportunities to improve almost every aspect of our lives

9   In an increasingly digitalised world, the power and potential of data-driven technologies are immense – enabling more efficient and effective decision-making, improved social and environmental outcomes, and enhanced economic growth. Some examples include:

    9.1   *Creating smarter and more sustainable cities:* Sensors and other Internet of Things[2] (IoT) devices can be used to monitor air quality, traffic flow and critical infrastructure, while predictive analytics can be used to identify areas that are at risk of flooding or other environmental hazards. This can help people plan for severe weather events and identify safe evacuation routes.

    9.2   *Advancing education:* Data-driven technologies such as personalised learning path planning algorithms can be used to create more personalised and effective learning experiences for students, fostering an adaptive, equitable and inclusive learning environment.

However, the need to address the complex ethical issues that arise from data and data-driven innovations is also becoming increasingly urgent

10   While data-driven innovations can enhance our lives, they can also come with risks. A topical area where these risks are playing out is generative artificial intelligence (AI). Generative AI is a category of AI models and tools that can create new outputs or content based on the data they have been trained on in

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[2] The Internet of Things describes physical objects embedded with sensors/actuators that communicate with computing systems, allowing the physical world to be digitally monitored or controlled.

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response to natural language prompts. Examples include the large language model-based ChatGPT (which can now tell stories, write code and act as a virtual assistant) and image generator Midjourney (which can produce detailed synthetic artworks using text-based prompts).

11   While these AI applications offer many potential benefits, they can perpetuate existing biases and discrimination if the training data is biased, discriminatory, or not representative of the population to which the programme is being applied. They can also generate false or inaccurate content and link previously unlinkable data.

12   Similarly, biometric and facial recognition software can now be used to enhance security, improve identification processes and personalise experiences. However, they can also be subject to significant algorithmic biases and errors, with programmes generating different accuracy rates for different demographic groups.

13   Data ethics is an essential part of responsible data usage and innovation. It involves balancing the potential benefits with the need to protect confidentiality, ensure transparency and accountability, and promote fairness and equity in the use of data. When individuals and communities can trust that their data is being used ethically, they are more likely to participate in data sharing and engage with innovative solutions. This, in turn, fosters a culture of trust and openness that encourages further innovation and collaboration.

We need to ensure that we have mechanisms in place to support safe and ethical data-driven innovation

14   As Aotearoa New Zealand embraces data-driven technologies, it is crucial that we establish appropriate mechanisms to ensure that ethical considerations are at the forefront of decision-making. One misstep with data can have a chilling effect on the entire system and increase the risk of people not engaging with important services. This can inhibit innovation and the ability to unlock the full potential of data.

15   It is important to note that we are not starting from scratch, as good progress has been made to bolster the leadership role within government. For example, trust is a key focus for the GCDS, who is the system lead for data. In late 2022, Cabinet broadened the mandate of the GCDS to include:

15.1   embedding ethics in the way data is managed, collected and used across government

15.2   supporting the data system to deliver with, and for, Māori, and recognise Māori [GOV-22-MIN-0056 refers].

16   Other mechanisms we have put in place to build trust in data and promote its ethical use in the public sector include:

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16.1 The *Data Ethics Advisory Group* (DEAG), which helps government agencies explore new and emerging uses of data while adhering to ethical data practices.

16.2 The *Algorithm Charter for Aotearoa*, a voluntary cross-government charter signed by 28 agencies, which ensures their commitment to develop and use algorithms in a safe, accountable and transparent way.

16.3 The *Ngā Tikanga Paihere* framework, which focuses on how data about Māori and other under-represented sub-groups is used for research purposes. It also guides data users and researchers on how they could bring better insights to the data, by building relationships with communities from whom the data originates.[3]

16.4 The *Data Protection and Use Policy (DPUP)* principles, which support the safe and respectful use of data and information by government agencies and service providers.

17 In recognition of the need to take an all-of-government approach to AI, government system leads are developing initial advice on generative AI for government agencies. Future work has also been signalled in the *Digital Technologies Industry Transformation Plan* to advance development of an AI Strategy that helps New Zealand leverage the economic opportunities of this technology in a trustworthy way.[4]

18 However, there are three key gaps in the system that are yet to be addressed:

18.1 First, there is no centralised, public-facing 'first port of call' to bring together collective action, improve visibility and anticipate the opportunities and risks posed by data-driven technology across sectors. There is also a wide degree of variability in how and when data ethics are considered in relation to collection, storage, use and sharing of personal data, across a range of users and activities. While we have robust regulatory systems, various ethics committees and a strong network of regulators overseeing the various sectors and activities that rely on data, these can operate independently from one another and may not provide for the right data protections.[5]

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[3] In January 2022, the Cabinet Business Committee also agreed to the refocused work programme *Te Tumu mō te Pae Tawhiti* which seeks to align a range of work including (system lever) Māori data governance.

[4] New Zealand has also adopted several international instruments related to data including the OECD Declaration on Government Access to Personal Data Held by Private Sector Entities (adopted December 2022), and the OECD Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information (adopted April 2008).

[5] For instance, the Ministry of Justice is responsible for providing policy advice on human rights harms that data ethics issues may cause. The Government Chief Privacy Officer (GCPO), supported by DIA, is the practice lead for privacy and supports government agencies to meet their privacy responsibilities and improve their privacy practices. The GCPO works with the Office of the Privacy Commissioner, the government's chief privacy regulator and complaints investigator regarding breaches of privacy. The Government Chief Digital Officer, also

18.2   Second, the ethical implications of data-driven technologies cut across multiple sectors and disciplines, and no single government agency currently has the depth of knowledge and expertise across all fields. Our pool of domestic expertise is also relatively limited given our size, and our approach to engaging with the private sector and international experts is currently piecemeal and ad-hoc. This limits our ability to draw on valuable insights and expertise, and establish the networks needed to get ahead of issues and develop effective solutions. This connection is critical as the public sector is typically not involved in the development of new technologies and tools, but often has a role in regulating them or fostering industry growth where it is a strategic priority to do so. As one of New Zealand's largest purchasers and users of these technologies, government can leverage its market power to signal the importance of the ethical use of data and to role model ethical use.

18.3   Third, building a higher degree of public trust is critical in the development and uptake of data-driven technologies and the ability of government and others to use data. To achieve this, people need to be able to access expert information and best practice. They also need to have confidence that the information and advice they receive is evidence-based and impartial, drawing on insights from a wide range of sources – including regulators, academia, businesses and NGOs, and the wider public. This is particularly important in fast-moving and rapidly evolving sectors (like data-centric technologies), where ethical considerations can quickly evolve.

A Centre for Data Ethics and Innovation will help support safe data use and ethical data-driven innovation

19   A Centre for Data Ethics and Innovation can provide strong leadership, consolidate expertise, and help coordinate across agencies and the wider system to tackle these issues efficiently and proactively.

20   This approach has also been taken in comparable jurisdictions (e.g. UK and Australia), who have or are in the process of setting up advisory functions in response to the rapid developments in data-driven technology. Aotearoa New Zealand has a unique opportunity through our relationship to te Tiriti to develop strong ethical structures, with te ao Māori principles at its core.

21   The time to act is now. Without appropriate leadership mechanisms in place, we risk falling behind other countries. I am therefore looking to make initial moves within the GCDS mandate, in line with what Cabinet agreed to in December 2022. The Centre will ensure that Aotearoa New Zealand remains at the forefront of safe and ethical data-driven innovation, while also promoting trust and confidence among citizens and businesses alike.

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supported by DIA, is the government functional lead for digital, and is responsible for certification, accreditation and assurance processes. Meanwhile, MBIE is responsible for setting the strategic direction for AI and data innovation through the Digital Strategy for Aotearoa. Finally, the Government Chief Security Information Officer, located in NCSC, plays a key role in information security interventions.

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Development of the Centre has been informed by stakeholder engagement

22   In April 2023, Stats NZ commenced its first round of stakeholder engagement to test early thinking on the Centre and its potential scope, purpose, objectives and focus areas. Four workshops were held with industry, NGOs, Māori data experts, academia and government agencies, with more than 70 representatives taking part. Separate interviews and conversations were conducted with partners and stakeholders that were not able to attend the workshops, or who requested more direct, detailed and/or private conversations.

23   In recognition of the importance of embedding a te ao Māori approach in the design process, Stats NZ is having ongoing conversations with key Māori contacts with expertise in Māori data, with the intention of moving to a broader wānanga approach as establishment work progresses. This will help ensure that the interim Centre holds space for co-design, and for Māori to consider different governance mechanisms for the Centre to support shared leadership in its more permanent form.

There has been broad cross-sector support for the Centre

24   Stakeholders considered that the overarching purpose of the Centre should be to advise on the settings and tools needed to promote safe data use and ethical data-driven innovation in Aotearoa.

25   An initial set of objectives for the Centre were also identified. These are:

    25.1   deepen the understanding of data ethics within the unique context of Aotearoa New Zealand, te ao Māori, and te Tiriti o Waitangi

    25.2   map out what regulations, capabilities, standards and guidelines already exist and how they fit (or overlap) with each other

    25.3   identify gaps in the system that could benefit from greater guidance or support

    25.4   support government agencies to disseminate tools, guidance, best practice and case studies.

26   There was overall agreement that the Centre should play an advisory and coordination role, while raising public awareness of both the challenges and opportunities that Aotearoa New Zealand is facing in this space. Stakeholders also broadly agreed that it needed to have the mandate to support both the public and private sectors. The private sector was particularly keen for the Centre to establish guardrails that could help support innovation by issuing guidance and providing examples of good practice. Stakeholders emphasised the importance of drawing on the expertise that exists within the system and consolidating and building on established initiatives and tools.

27   Stakeholders and partners also noted that the balance of data ethics and fostering innovation is complex and will not be solved by a 'copy and paste' approach from other countries. They suggested that the Centre should define

what data ethics means within the Aotearoa New Zealand context as a first step and embed te Tiriti o Waitangi and te ao Māori principles in the Centre's operations and its priorities. Engagement is ongoing with te Tiriti partners and will expand to broader iwi/Māori groups on how to give effect to this outcome. This will also include consideration of Māori interests in data, including proposals arising from the Māori Data Governance Model.

28   Finally, stakeholders emphasised that the Centre needs to prove itself early on to build trust and credibility across sectors and with the public. To do this, its focus areas and work programme for the first 12 months need to be targeted and well-defined.

I now seek Cabinet agreement to the Centre's initial scope and work programme

29   Acknowledging the need to act quickly, I am progressing the Centre in two phases. I am first standing up an interim Centre as a small unit[6] within the function of the GCDS by October 2023. The interim Centre will then transition to a formalised Centre with a wider mandate and a scaled-up work programme in a year's time.

30   The Centre is being designed to connect across portfolios on data ethics issues, working with agencies and system leads including the Government Chief Digital Officer, Government Chief Privacy Officer and the Government Chief Information Security Officer. It will also have a key public-facing function, acting as a central contact point to triage enquiries from the private sector and civil society. The Centre will also provide secretariat support to, and draw on, the expertise of the Data Ethics Advisory Group (which also sits within the GCDS umbrella). Thematic points and principles could be taken from the Group's consideration of specific projects and these could form the basis of more generalised guidance released by the Centre.

31   To support this design, the interim Centre will:

31.1   act as a centralised hub to support the integration and coordination of relevant work programmes across agencies

31.2   use a network model to draw on and leverage knowledge and expertise from across the system and develop shared-interest networks

31.3   provide visibility, advice and guidance, and promote public awareness and engagement.

32   Its overarching objective is to build the foundations for the formalised Centre to ensure its long-term impact and success. To give effect to this objective, the interim Centre will focus on delivering the following work programme:

32.1   establish a presence and build key networks

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[6] planned four person

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32.2   define its role and its relationship with other key players in the system

32.3   support the design and establishment of the formalised Centre, including undertaking public engagement on its form, functions and forward work programme

32.4   work with relevant organisations to confirm the Centre's objectives.

33   During its initial establishment work, the interim Centre may provide guidance to government agencies on ethical issues related to data use and data-driven innovation but will not set or enforce new regulations itself. These tools could also be made to non-government organisations where appropriate.

Implementation

34   If endorsed by Cabinet, the interim Centre will:

34.1   commence its mandated work programme

34.2   undertake more extensive and fulsome engagement on what its more permanent form, functions and forward work programme should be.

35   I will then report back to Cabinet to share the progress of the interim Centre's work programme, and to agree to the Centre's form, objectives, focus areas and outcomes framework in July 2024.

Figure 1. Plan for Centre establishment and implementation

Financial Implications

36   To provide assurance on its value and test its ability to be sustainable on a small scale without further investment, Stats NZ has committed baseline funding to support the establishment and seed operations of the interim Centre. Resource has been redirected from within baseline and from the funding allocated for data system leadership (currently focused on establishing the Centre) towards the interim team.

37   Additional funding may be sought in future Budget cycles or through agency club-funding as the Centre's functions are formalised.

Legislative and Climate Implications

38   There are no regulatory or climate implications from this proposal.

Treaty of Waitangi Implications

39   In its *Report on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (Wai 2522), the Waitangi Tribunal noted that "data and digital technologies form part of (or have the potential to form part of) the taonga that is mātauranga Māori". They considered that this places a heightened duty on the Crown to actively protect rights and interests to data and the digital domain. The Centre can help the Crown navigate in this space and operate between kawanatanga and rangatiratanga.

40   As noted above, in recognition of the importance of embedding a te ao Māori approach and engaging with iwi/Māori as partners in the design process, Stats NZ is having ongoing conversations with key Māori contacts with expertise in Māori data, with the intention of moving to a broader wānanga approach as establishment work progresses. This will help ensure the Interim Centre holds space for Māori to identify key priorities for the Centre and consider different governance mechanisms to support shared leadership in the Centre's final form.

Population Implications

41   The Centre can help promote the development and use of more accurate, equitable and representative algorithms and data sets that do not perpetuate existing stereotypes and discrimination. This will help achieve a more equitable distribution of the benefits of the use of data (and therefore increased wellbeing) for at-risk groups, including Māori.

42   It will also support the development of more inclusive and accessible technologies and services that better cater to the specific needs and experiences of diverse groups.[7]

Human Rights

43   This paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

44   The following agencies have been consulted on this Cabinet paper: Department of Internal Affairs; Ministry of Business, Innovation and Employment; Ministry of Housing and Urban Development; Ministry of Education; Te Puni Kōkiri; Ministry for Primary Industries; Inland Revenue; the Treasury, Ministry of Social Development; Ministry of Health; Ministry for the Environment; Ministry for Women; Whaikaha – Ministry of Disabled People; New Zealand Defence Force; Kainga Ora; Department of Conservation;

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[7] This includes Pacific people, ethnic communities, disabled people, older people, LGBTQIA+, and people living in remote areas.

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Department of Corrections; Ministry of Defence; Ministry of Transport; New Zealand Customs; Security Intelligence Service; Oranga Tamariki; ACC; Waka Kotahi New Zealand Transport Agency; Ministry of Culture and Heritage; Ministry for Ethnic Communities; New Zealand Security Intelligence Service; National Cyber Security Centre (Government Communications Security Bureau); Ministry of Foreign Affairs and Trade; Ministry for Pacific Peoples; Office of the Privacy Commissioner; Social Wellbeing Agency; NZ Police; Public Service Commission; Human Rights Commission; Productivity Commission; Te Whatu Ora Health NZ and Land Information New Zealand. The Department of the Prime Minister and Cabinet has been informed.

45   Many of these agencies also attended the initial engagement workshops in their capacity as subject matter experts.

Communications

46   I intend to announce the establishment of the interim Centre for Data Ethics and Innovation following the Cabinet meeting. I will issue a press release.

Proactive Release

47   I intend to proactively release this paper within 30 days of the Cabinet decision.

Recommendations

The Minister of Statistics recommends that the Committee:

1   **note** that advances in the use of data and data-driven technologies are evolving rapidly, and we need to ensure that we have mechanisms in place to support safe and ethical data-driven innovation

2   **note** the Government has signalled the establishment of a Centre for Data Ethics in the *Digital Strategy for Aotearoa* to provide strong leadership, consolidate expertise, and help coordinate across agencies and the wider system to tackle these issues efficiently and proactively

3   **note** that stakeholder engagement to date has established broad support for a Centre for Data Ethics and Innovation, and has informed the development of its purpose, indicative objectives and potential work programme

4   **note** that the overarching purpose of the Centre is to determine the settings and tools needed to promote safe data use and ethical data-driven innovation in Aotearoa

5   **note** the Centre's indicative set of objectives are to:

      5.1   deepen the understanding of data ethics within the unique context of Aotearoa New Zealand, te ao Māori, and te Tiriti o Waitangi

      5.2   map out what regulations, capabilities, standards and guidelines already exist and how they fit (or overlap) with each other

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5.3 identify gaps in the system that could benefit from greater guidance or support

5.4 support government agencies to disseminate tools, guidance, best practice and case studies.

6 **note** that the pace of innovation in this space means we need to act quickly – which is why I am establishing the Centre in two phases – first standing up an interim Centre now, before transitioning to a formalised Centre with a wider mandate and a scaled-up work programme in a year's time

7 **agree** that the interim Centre's key objective is to build the foundations for the formalised Centre to ensure its long-term impact and success

8 **note** that the interim Centre will:

8.1 act as centralised hub to support the integration and coordination of relevant work programmes across agencies

8.2 use a network model to draw on and leverage knowledge and expertise from across the system and develop shared-interest networks

8.3 provide visibility, advice and guidance, and promote public awareness and engagement

9 **agree** that the interim Centre will focus on delivering the following work programme:

9.1 establish a presence and build key networks

9.2 define its role and its relationship with other key players in the system

9.3 support the design and establishment of the formalised Centre, including undertaking public engagement on its form, functions and forward work programme

9.4 working with relevant agencies to confirm the objectives of the Centre

10 **agree** that the interim Centre may provide guidance on ethical issues related to data use and data-driven innovation, without setting or enforcing new regulations itself

11 **note** the interim Centre will be established as a unit within the function of the Government Chief Data Steward

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12   **invite** the Minister of Statistics to report back to Cabinet in July 2024 to share progress of the interim Centre's work programme, and to agree to the formalised Centre's form, objectives, functions, focus areas and outcomes framework.

Authorised for lodgement

Hon Dr Deborah Russell

Minister of Statistics

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