Coversheet: New data and statistics legislation

Advising agency	Statistics New Zealand (Stats NZ)
Decision sought	Key policy decisions for new data and statistics legislation
Proposing Ministers	Hon James Shaw, Minister of Statistics

Summary: Problem and Proposed Approach

Problem Definition: What problem or opportunity does this proposal seek to address? Why is Government intervention required?

The Statistics Act 1975 (the 1975 Act) was designed with a focus on paper-based collection and production of statistics as the only quantitative evidence base for decision makers. As a result, it is increasingly unable to flex and respond to advances in digital technology and data analytics, new and diverse data sources, and changing information needs, and is constraining the value that could be achieved through data and statistics. Our data and statistics system has grown well beyond that of the 1970s, and our capacity to collect and analyse data would be unrecognisable to the designers of the 1975 Act.

While the data and statistics policy underlying the 1975 Act remains largely sound, it is no longer adequately provided for in the legislative framework. It is substantially behind technology and best practice, with an antiquated authorising framework, ineffective sanctions, and a focus on data collection through schedules attached to survey requests largely ignoring that statistics are produced from a combination of data sources including the data collected by government agencies in carrying out their day-to-day business. It is also almost completely silent on the integration and use of data for research and analysis, despite this being one of Stats NZ's primary functions.

Responding to new and emerging information needs and data opportunities can take substantial time and effort to decide what is and is not permissible under a now 45-year-old Act, which has not been substantively amended since it was enacted. The resulting gradual erosion of system integrity and resilience and the system's ability to adapt to new opportunities and risks limits the value that could be derived from data and statistical assets. This increases the likelihood of a failure in the system and significant loss of trust and confidence, both domestically and internationally.

Across the data and statistical system there is much good work going on to improve data practices, make data more accessible, protect privacy and confidentiality and support decisionmakers through the analysis of good quality data and statistics but the 1975 Act needs to 'catch-up' and provide a strong statutory basis for the system. Without the government intervention necessary to modernise and update the 1975 Act, the risk of system failure and erosion of system integrity and resilience will remain and likely increase over time. This erosion risks manifesting itself in a sudden and unexpected event leading to an inability to produce key economic, social or environmental statistics. For example, if a government agency decided to cease collecting data for its own purposes the

corresponding loss of a key administrative data source could result in significant delay while an alternative data source was found.

Proposed Approach: How will the agency's preferred approach work to bring about the desired change? How is this the best option?

The preferred option is to modernise and update the existing legislative framework to ensure it meets best practice expectations for statistical legal frameworks internationally and aligns with modern legislative requirements domestically.

A modern and updated legislative framework, achieved via a Data and Statistics Bill (the Bill),[1] will strengthen the data and statistics system and increase the utility of data and statistics for the benefit of New Zealanders. It will also be able to reflect the principles of the Treaty of Waitangi in line with Māori Crown expectations for modern legislation.

Stats NZ 's preferred approach will better:

- enable the collection and sharing of quality data and statistics
- improve consistency, coherence and comparability of data and statistics across the system
- enable Stats NZ to receive, integrate and provide access to data for research and analysis
- support people to meet their obligations to provide and protect data, and deliver proportionate sanctions for when they do not

Stats NZ used the following criteria to assess the impact of each of the options considered (see section 3.2 for more discussion on that assessment):

- value – maximising opportunities to benefit New Zealanders
- system integrity – ensuring a resilient and sustainable system, and
- efficiency – reducing unnecessary duplication, improving quality and lessening response burden, and avoiding unnecessary cost

Alternative options for greater centralisation of data and statistical services, increased obligations on the private sector to provide data for research and analysis, and retaining only criminal sanctions (albeit with adjusted penalties to align with comparable offending under other enactments) are described in detail in section 3.1. While some of these alternative options may provide for greater coherence, comparability and consistency, or greater certainty, when compared to the status quo or the preferred option, their costs are greater and they would require significant and potentially unwarranted system change.

The preferred package will provide the necessary strong foundation for a data and statistical system that is resilient and reliable over time, with the ability to flex and respond to new and emerging challenges (such as the new data sources becoming available, or changing government priorities towards measuring what matters to New Zealanders). The preferred approach is one that is low-cost and will produce moderate benefits. It will assist

[1] Parliamentary Counsel Office have advised Stats NZ that a replacement Bill is a better approach than simply amending the 1975 Act as the language and drafting style used in that Act is completely outdated.

to safeguard the current value of the system from any further erosion, while also enabling greater value from the underlying data and statistical assets the government holds.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

Monetised and non-monetised benefits

While the changes proposed aim to strengthen the data and statistical system rather than to substantially alter it, we anticipate moderate benefits over the next 5 – 10 years to:

- Individuals and organisations who provide data on request to support the production of statistics will benefit as the quality of administrative data collections increases, the need to ask respondents directly for information already collected by government will diminish. Further benefit comes from greater transparency of safeguards around research and analysis and from clearer obligations and proportionate sanctions so that more minor breaches can be responded to without recourse to criminal prosecution.

- Decision-makers and other data users who rely upon insights and information derived from statistics, and from research and analysis of government-held data, will have more certainty about the quality of the evidence-base and the system will be able to respond more efficiently to meet their immediate and future information needs.

There will also be moderate benefits (including reduced costs over time) for government agencies who produce statistics, and provide administrative data to Stats NZ for that purpose, from the increased certainty about data and statistical best practice requirements, improved data quality and capability, and increased opportunities to share and use data for statistical production and for research and analysis.

Where do the costs fall?

The proposed approach will not result in additional costs on data suppliers, data users or government agencies that produce statistics or conduct research and analysis. As discussed in section A, there is much good work across the system already underway which is lifting data capability, practice and quality.

Stats NZ will face small costs associated with implementing new legislation, which it will meet out of baseline. This includes updating its communications and guidance to take account of the legislative change, as well as costs to enhance the authorisation machinery and in respect of operating a modern offences and penalties regime. These costs are further articulated in section 6.1.

In a few isolated cases individual agencies who are best placed to collect data on behalf of the Government Statistician that they would not otherwise collect may face new costs that are material for them. These proposals represent the most efficient cost-option at a system level. Where the costs for an individual agency are material, Stats NZ will work with the agency to examine funding and implementation options that are financially viable, and in isolated cases system-level investment proposals may be developed.

For example, improvements to the way government collects iwi affiliation data are currently being worked through at a system level including to help determine which agencies are best placed to collect the data, the adoption of standard classifications for iwi affiliation data, and how agencies would implement change.

To support this work, partnerships with Māori are progressing to help ensure that Māori information needs are also met, and to support Te Ao Māori informed practices and processes. System level benefits that arise include the opportunity for iwi affiliation data to inform resource allocation and programme delivery, stronger partnerships with iwi, and improved outcomes for Māori.

What are the likely risks and unintended impacts? how significant are they and how will they be minimised or mitigated?

The data and statistical system relies on the collection and use of information including personal and commercially sensitive business information. The former includes identifying information about Māori, Pasifika, people with disabilities, and children and other vulnerable populations; the latter includes such information as product offering, margins, distribution channels, investment plans etc.

There is an existing risk that unauthorised disclosure of information that should have been kept confidential results in harm to the person, people or organisation identified in the disclosure and a loss of trust and confidence in the way that government stewards the data it holds on behalf of New Zealanders. In turn, this potentially reduces the integrity of the system the proposals are designed to maintain.

The preferred approach offers better mitigations of risks through more modern privacy, confidentiality and security requirements and by introducing requirements that support increased transparency and accountability. These requirements draw on domestic and international best practice and reflect shifts in data protection laws without unnecessarily constraining the use of data for statistics, research and analysis.

The Bill will not be able to address all the risks related to government agencies and their management and use of data. For example it will not directly address security, quality, consistency and coverage of data collected and used by government agencies in carrying out their everyday business (except where that data is also a data source for statistical production or is to be shared for research and analysis under the Bill).

While these proposals involve modernising the provisions for prioritisation of data collection and management by the system, it also does not extend compliance obligations in relation to the sustainability of administrative data by private entities that is subsequently collected by, or shared with, Stats NZ or other government agencies for research and analysis or statistics.

Identify and significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

No significant incompatibilities with the Government's 'Expectations for the design of regulatory systems' have been identified.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

Stats NZ is confident in the evidence supporting the proposed reform. Stats NZ has extensive experience as New Zealand's national statistical agency and in integrated data to support research and analysis. The Chief Executive of Stats NZ as well as being the Government Statistician is also the Government Chief Data Steward, a functional leadership role confirmed by the State Services Commissioner in recognition of existing data capability, system leadership and good practice.

In that context, we have drawn from a range of domestic and international best practice expectations in formulating these proposals, including:

- the United Nations Fundamental Principles of Official Statistics adopted by the United Nations General Assembly and endorsed by New Zealand
- the Generic Statistical Law developed by the Conference of European Statisticians under the United Nations Economic Commission for Europe of which New Zealand is a member
- the Recommendation on Good Statistical Practice endorsed by the Organisation for Economic Co-operation and Development and binding on New Zealand
- the Guidance on Modernising Statistical Legislation, developed by a United Nations Economic Commission for Europe task force (which Stats NZ was a member of) and endorsed by the Heads of statistical offices of more than 60 countries at the 2018 plenary session of the Conference of European Statisticians
- the Legislation Design and Advisory Committee's Legislation Guidance

We have also used the practical experience of other agencies and jurisdictions in establishing legislative and other expectations for data and statistics:

- the European Data Protection Regulation and the United Kingdom's Digital Economy Act 2017 and Data Protection Act 2018
- the work led by the Australian Interim Data Commissioner and their Office of Prime Minister and Cabinet to develop a Data Availability and Transparency Act (previously referred to as new data sharing and release legislation)
- the work of the Data Futures Forum and Partnership to develop trusted data use guidelines for New Zealanders, which Stats NZ supported at a secretariat level
- the work of the Social Investment Agency (soon to be renamed the Social Wellbeing Agency) in developing their Data Protection and Use Policy for the social sector, which Stats NZ supported at a governance and working group level
- input from relevant specialists in agencies that produce official statistics and that use data for research and analysis through the integrated data infrastructure and longitudinal business database at Stats NZ

- input from iwi and Māori organisations who have interests in, and/or are expert users of, data and statistics for and about Māori and
- formal feedback from submitters through public consultation.

The proposals have also been informed by Stats NZ's ongoing engagement with data users and providers more generally, including its Data Ventures commercial arm, its leadership of the open data programme, and its collaboration with other national statistical agencies and international statistical organisations.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
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.
Quality Assurance Assessment:
The cross-agency Quality Assurance Panel has reviewed the Regulatory Impact Assessment (RIA) "New data and statistics legislation" dated February 2020 produced by Stats NZ. The panel considers that the RIA meets the quality assurance criteria.
Reviewer Comments and Recommendations:
The panel notes the importance of the future work outlined in the RIA to confirm the level of penalties before the Bill is introduced.

Impact Statement: New data and statistics legislation

Section 1: General information

1.1 Purpose

Stats NZ is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except where explicitly mentioned.

The analysis and advice have been produced to inform key policy decisions to be taken by Cabinet on the settings required for the data and statistical system.

1.2 Key Limitations or Constraints on Analysis

Quantifying the value of the data and statistics system

Quantifying the value of the data and statistics system is challenging because the insights and information generated from it are typically unpriced. An incredibly broad range of data users can benefit from the system, and their use of data and statistics in a hugely varied, including uses which may be private and unobserved.

Even trying to quantify the value of a particular statistical output is difficult. For example, quantifying the value of the census of population and dwellings is difficult because:[2]

- it is delivered by a single government department (Stats NZ) and has been taken for over 160 years
- everyone in New Zealand on census night has an obligation to provide the information requested (a monopoly survey right)
- statistical information produced from the census is provided free of charge
- direct market prices for almost all census outputs do not exist
- there is a lack of near substitutes.

Despite these limitations, Bakker conservatively estimated the net present value of close to $1billion for the benefits to New Zealand gained through the use of census and population statistics information over 25 years. This means that for every dollar invested in the census, there is a net benefit of five dollars in the economy.[3]

Internationally, other national statistics offices (NSOs) face similar hurdles in valuing the benefits of official statistics (or the data and statistical system). Consequentially, there is a lack of a commonly recognised outputs and persuasive means of computing the value

[2] Carl Bakker, *Valuing the Census: A report prepared for Statistics New Zealand which quantifies the benefits to New Zealand from the use of census and population information* (Statistics New Zealand, April 2013), at 12.

[3] Bakker, C (2014), *Valuing the census*

of the outputs produced by statistical agencies.[4] Where possible, we will provide some quantification of value and impacts, but even these will be conservative.

One of the objectives of this policy proposal is to, at a minimum, improve the reliability and resilience of the data and statistics system, thereby retaining the current value and preventing the erosion of the system. We note, for example, that even small increases or decreases in survey and census completion rates affect data quality and comparability, the timeliness of statistical releases, and/or in the amount of data shared for research and analysis. These can have significant detrimental or beneficial downstream impacts for data users several times larger than direct impact of the Bill. We note that previous comments from the Reserve Bank estimating that even slight improvements in economic performance as a result of better decisions could easily be worth $100 million per annum.

Range of options considered

At the outset of the review, Stats NZ considered a range of options, including greater centralisation of statistical functions (to give assurance on quality and practice) and extending obligations into the private sector to provide more data for government use. These options are generally associated with significantly increased costs, particularly in the short to medium term.

While Stats NZ continues to implement non-regulatory responses to the issues we have identified, our view is that in order to fully address the problems the underlying legislative framework needs to be modernised.

In all options legislative reform is necessary in order to resolve problems that arise primarily from the antiquated and incomplete provisions of the Statistics Act, which constrains the response to changes in information needs, expectations and capability of data users, risk, and new and emerging data sources and technology.

In addition to proposing a modernised legislative framework, Stats NZ will continue to provide technical and practical support across the data and statistics system and with users and providers of data to achieve operational and governance level improvements. Examples include the establishment of the Data Ethics Advisory Group accessible to agencies as they design and test new data initiatives, improved access to Stats NZ data for iwi, and work with local and central government to improve data management and governance practices.

Consultation and testing

All significant issues and proposals considered in this RIA have been publicly consulted on and discussed directly with interested stakeholders.

[4] *Recommendations for Promoting, Measuring and Communicating the Value of Official Statistics,* United Nations Economic Commission for Europe, (United Nations, New York and Geneva, 2018), at 29.

1.3 Responsible Manager (signature and date):
9(2)(a)    Data System Leadership Stats NZ

Section 2: Overall context

2.1 What is the current state within which action is proposed?

Robust, impartial, trusted data and statistics, and the insights generated from them, are critical to effective democracy, decision-making and accountability at all levels. Data and statistics help us to understand what works, what is not working, and what action needs to be taken in response. By undertaking to measure what matters, we can focus on ensuring a sustainable, timely and reliable evidence base to supports better outcomes for all New Zealanders.

Government's collection, stewardship, and use of data and statistics is shaped by consideration for the people, communities, environments and organisations the data is from, about, and for. We therefore have responsibilities to keep the data we steward secure, with appropriate levels of privacy and confidentiality maintained. Clear legal frameworks are essential to maximise the utility of data while ensuring public trust in the safeguards and protections afforded to it.

Stats NZ is the data-focused agency charged with being New Zealand's national statistical office. At its simplest Stats NZ focuses on producing statistics and integrating data so that it can be used for public interest research and analysis. The Chief Executive of Stats NZ, as Government Statistician, is required to lead and co-ordinate across the system.

New Zealand's statistical system is a distributed one, so Stats NZ is not the only producer of key statistics. Thirteen government agencies produce 45 of the 131 tier 1 statistics (official statistics prioritised by Cabinet); the others are produced by Stats NZ. For example:

- the Ministry for Primary Industries publishes statistics on commercial fish catch and forestry production
- the Reserve Bank of New Zealand publishes statistics on foreign exchange rates and interest rates.

The legislative foundations for the system are largely found in the Statistics Act 1975. The Act is out of date, and hasn't been substantially amended since it was enacted. It doesn't reflect the modern drafting expected of legislation today and lacks flexibility in some respects while being unnecessarily rigid and prescriptive in others.

Overall, the Act is limiting our ability to respond to opportunities for greater economic, environmental and social value for New Zealanders from trusted use of data. In particular, the 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.

Continuing to develop New Zealand's data and statistics system has the potential to grow New Zealand's prosperity. Data is often identified as a key component of economic growth, with data-driven innovation representing a multi-billion dollar opportunity for New Zealand via greater use of data and analytics to foster new and improved products, processes, organisational methods, and markets while respecting people's rights to say how their data is used.[5]

Use of data and statistics

Data and statistics are used to:

- inform public policy decisions
- allocate public resources and focus private investment
- realise opportunities for innovation
- provide insights into the performance of government
- measure the impact of public policies and programmes
- support open democracy enabling participation in government processes.

Data and statistics are also relied upon to meet international reporting obligations to the Organisation for Economic Co-operation and Development (OECD), the International Monetary Fund (IMF), and the United Nations. For example, environmental statistics and data are required for New Zealand to meet international obligations including:

- Reporting on New Zealand's greenhouse gas inventory, as part of the country's obligations under the United Nations Framework Convention on Climate Change
- Monitoring the components of biological diversity as required under the United Nations Convention on Biological Diversity.

And to enable New Zealand's participation in international research projects such as the OECD's MultiProd project that provides a comprehensive picture of productivity patterns across a range of countries.[6]

Examples of government's use of data and statistics include:

[5] *Data-driven Innovation in New Zealand*, Sapere Research Group and COVEC, 2015.

[6] The MultiProd project contributes to better economic policies by studying how productivity of businesses translates into aggregate productivity.

- distributing overall health spending which is allocated on a Census based demographic basis

- long-term fiscal modelling and forecasting by the Treasury to inform broad expenditure and revenue choices

- estimating the impact of demographic forecast data for major investments roading and infrastructure (NZTA and the Ministry of Transport)

- analysis and policy development, combining time series and small area population demographics by MSD.

Examples of other uses include:

- economic indicators (eg, Gross Domestic Product and the Consumer Price Index) inform assessments by international credit rating agencies that impact on foreign investment and are used by businesses to inform decision-making

- population data used by retailers to plan new retail investments.

Benefits of good quality data and statistics

Good quality data and official statistics can have a significant financial impact. For example, the Reserve Bank, in its submission to the Finance and Expenditure Committee's 2007 Inquiry into the future monetary policy framework noted that better data can result in better and more timely judgements, and that the impact of decisions taken too soon or too late on tightening or easing monetary policy is significant. As New Zealand's annual GDP is around $160 billion, even slight improvements in economic performance as a result of better decisions could easily be worth $100 million per annum.

Costs of poorer quality data and statistics

Decision-making based on poor quality data and statistics can result in negative impacts across society, including negative financial, health, environmental, and social outcomes to government, businesses and people. For example, services can be needlessly duplicated, evaluation of successful programmes is difficult, tax dollars can go uncollected, infrastructure maintenance is conducted inefficiently, and investment in health care is misdirected and wasted.[7]

It can also result in an unnecessary increased government expenditure. For example, if the availability or quality of data sources (a combination of survey and administrative data) that informs the Quarterly Employment Survey (QES) declines, the potential impact could be substantial.

> Government spending on social security and welfare was $34 billion over Budget 2019. MSD uses the QES to calculate adjustments to benefits each year.[8] If the average ordinary time weekly earnings data quality dropped and inaccurate statistics were published, this would result in a compromised review. This could

[7] Katherine Barret and Richard Green, "The Causes, Costs and Consequences of Bad Government Data" (June 2015): https://www.governing.com/topics/mgmt/gov-bad-data.html

[8] Social Security Act 2018, section 452A

potentially lead to government over-investing in beneficiary payments, which carries a fiscal cost. It could also result in underpayments to beneficiaries, which would come at a financial cost to them and their families.

The Bill will contribute to lowering this risk through increased certainty about data and statistical best practice requirements, requirements for improved data quality and capability, clear prioritisation frameworks, and clear expectations about the Government Statistician access to the necessary data sources.

2.2 What regulatory system(s) are already in place?

The Government Statistician is responsible under the 1975 Act for advising the Minister on statistical policy matters (after conferring with Chief Executives of other producer agencies where appropriate) alongside other leadership and co-ordination duties including to promote the observance of statistical standards and to examine and comment where necessary on the interpretation and validity of statistics.

The 1975 Act places few obligations on producer agencies, apart from requirements to consult with and inform the government statistician on statistical projects and data sources, and to seek approval from the Minister of Statistics for surveys (this latter requirement was waived under the Act in the 1990s).

And it also places obligations on respondents to provide information when requested to by the Government Statistician including information that the respondent may not otherwise have had to provide, or have contemplated providing, to government.

In return, the 1975 Act requires the information provided to be kept secure and statistical confidentiality to be maintained (limited exceptions apply including consent, indexes or lists of business and industry classifications and details of external trade, movement of ships, and cargo handled at ports).

The 1975 Act provides for criminal sanctions if information is not provided in response to the Government Statistician's request and for unauthorised use or disclosure of the information provided.

The role of Stats NZ has expanded over time as the opportunity to share and integrate government-held data for research and analysis has proved indispensable. Given the strong protections in the Act and Stats NZ's data capability, Cabinet agreed that Stats NZ should receive and integrate government-held data to enable public interest research and analysis. The same requirements for security and confidentiality apply, as do the criminal sanctions for unauthorised use or disclosure.

2.3 What is the policy problem or opportunity?

Legislation substantially behind technology and best practice

The 1975 Act was designed in the early 1970s when statistics were produced in hard copy and regular computer use was just beginning. Information needs, statistical methodology, technology, privacy and the data environment have all undergone substantial change since then but the Act the has remained largely unchanged. It is struggling to keep pace and is at risk of failing to support the modern data and statistical environment that it regulates. It is also silent on the responsibilities of the Crown to consider and provide for the interests of Māori in data and statistics.

Antiquated authorising framework

The 1975 Act was designed when there were only a handful of other producer agencies. As such, it does not include a modern authorisation framework for the Government Statistician to lead and coordinate official statistics production. It only includes duties to develop and promote with no corresponding obligations for producer agencies to follow to take account of best practice requirements. This leads to inconsistent statistical practice across the system creating inefficiencies and risking the integrity, efficiency and sustainability of the system.

Focus on data collection through surveys and schedules

The 1975 Act focuses almost solely on collection of, and access to, individual schedules (i.e. the paper used to collect data) by Stats NZ and does not reflect the multiple ways that data is, or could be, provided to Stats NZ so that it can be used to produce meaningful statistics, research and analysis.

Stats NZ has observed a long-term gradual decline in business and social survey response rates. Response rates are harder to achieve and costing Stats NZ more, as people are harder to contact and less likely to participate in surveys. This is part of an international trend and particularly affects hard-to-reach communities. The Act's focus on survey instruments is limiting the adoption of collection methodologies to support increased response rates.

The 1975 Act is almost completely silent on the use of administrative data for statistical production which creates risk, given the long-run investments required to collect and maintain data assets. Stats NZ has only a limited ability to respond to and mitigate the unintended consequences associated with changes in administrative data practices and collections at provider agencies.

Critical elements of the statistical system should not be left out of the foundational legislative framework.

Lack of transparency and certainty related to research and analysis

While the 1975 Act enables the sharing of data for research and analysis, there is no express statement to this effect and it's not always clear what protections should apply and when. While organisations outside of government also share their data for research and analysis purposes, it's not possible under the 1975 Act to distinguish data shared by those outside government from data shared by government agencies or data provided for official statistics.

Statutory obligations and sanctions are outdated

The 1975 Act contains two broad types of obligations:

- to respond to requests by the Government Statistician for information needed to produce statistics and
- to protect the information and data provided under the Act (for statistical, research and/or analytical purposes)

It also lacks proportionality, relying solely on criminal sanctions. Additionally, the monetary penalties that a person or body corporate is liable to receive upon conviction is very low, having last been increased in 1982—

- a fine not exceeding $500 for an individual
- a fine not exceeding $2,000 for a body corporate.

The lack of proportionality and low monetary penalties can work together to undermine enforcement. Low penalties make an enforcement body less inclined to incur the costs of criminal prosecution and the effort required to establish a criminal standard of proof, even for the most serious non-compliers. The unlikelihood of criminal prosecution contributes to the lack of deterrent effect from such low penalties.

Outdated legislative framework constrains the system's ability to adapt and limits value

The 1975 Act is constraining the ability of the data and statistics system to adapt or respond to new opportunities and risks, limiting the value that could be derived from the underlying data asset base.

> For example, as government becomes a greater user of integrated data, Stats NZ's data offerings through the IDI and LBD are becoming more in demand. However, the Act's security and confidentiality provisions are so rigid that they are preventing opportunities to maximise the value of data in a statistical environment. An organisation is unable to access identified data it provided to Stats NZ unless an exception applied—even where that data was collected by the organisation itself, or where an organisation has an authority to access identified data for research, analytical or statistical purposes.

Constraints are also eroding system integrity and resilience

- Even small declines in administrative data quality or accessibility, or in survey responses can reduce public trust and confidence in the data and statistics system and could result in significant financial costs to government and others. For example, if a government agency decided to cease collecting data for its own purposes the corresponding loss of a key administrative data source could result in significant delay while an alternative data source was found.
- **Key economic statistics**: the downstream impact on New Zealand's international credit rating; financial markets; inflation; overseas investment; and government investment in infrastructure, health, and education from inaccurate, late, or no key economic statistics, like GDP and CPI could be substantial.

- **Social and population statistics**: the downstream impact from inaccurate, late, or no key social and population statistics could result in less robust and insightful policy analysis and advice resulting in misaligned policy and less efficient allocation of investment and resources in health, education, social security, and social housing, which would have a substantial impact on the government's balance sheet.

- **Environmental statistics**: the downstream impact from inaccurate, late, or no key environmental statistics could result in less robust and insightful policy analysis and environmental reporting. This could also put at risk New Zealand's ability to meet its international reporting obligations, including the Kyoto Protocol and other international commitments.

- **Integrated data**: The cost to the country of the value of the integrated data asset diminishing if strategic datasets can't be linked, due to concerns about trust, privacy, and/or the authority to link data would be pronounced. This would impact on the quality of evidence-based policy advice and make it more difficult to assess impacts of interventions and conduct other forms of research and analysis.

The Government Statistician lacks some of the necessary tools to ameliorate these risks, namely to ensure that organisations across the system adhere to best practice and standards and a requirement to be informed of substantial changes that an agency is considering to its data and statistics collections and systems.

The resulting risk is that agencies can be unsure whether they should follow best practice and therefore unintentionally deviate from it, which could impact on the quality, coherency and comparability of the statistics they produce. Another risk arises when agencies make or propose changes to their data collections and systems that may impact on the production of official statistics without being aware of the potential risk to statistical production. In cases such as these, the Government Statistician is left to try to persuade agencies to abide by best practice or to not make changes to data collections and systems that could have a substantial detrimental impact on the production of official statistics. Or in worst case scenarios, the Government Statistician would need to design, test, and administer a new survey in order to obtain the information required.

In seeking to modernise and update the legislation underpinning the data and statistics system, we consider that even small improvements to the collection and dissemination of data and the quality of data for official statistics will produce downstream value.

2.4 Are there constraints on the scope for decision making?

International norms and obligations

There are international obligations and best practice requirements that New Zealand has adopted or must take account of including in relation to data collection, production and use of data in statistical environments and statistics legislation (see particular references in section C to the evidence base for the preferred approach).

An example, is the Fundamental Principles of Official Statistics which were adopted by the United Nations Statistical Commission in 1994 and reaffirmed in 2013 (including by New Zealand). There are 10 Fundamental Principles, designed to ensure that national

statistical systems produce appropriate and reliable data that adheres to professional and scientific standards.

- **Principle 1**. Official statistics provide an indispensable element in the information system of a democratic society, serving the Government, the economy and the public with data about the economic, demographic, social and environmental situation. To this end, official statistics that meet the test of practical utility are to be compiled and made available on an impartial basis by official statistical agencies to honour citizens' entitlement to public information.

- **Principle 2**. To retain trust in official statistics, the statistical agencies need to decide according to strictly professional considerations, including scientific principles and professional ethics, on the methods and procedures for the collection, processing, storage and presentation of statistical data.

- **Principle 3**. To facilitate a correct interpretation of the data, the statistical agencies are to present information according to scientific standards on the sources, methods and procedures of the statistics.

- **Principle 4**. The statistical agencies are entitled to comment on erroneous interpretation and misuse of statistics.

- **Principle 5**. Data for statistical purposes may be drawn from all types of sources, be they statistical surveys or administrative records. Statistical agencies are to choose the source with regard to quality, timeliness, costs and the burden on respondents.

- **Principle 6**. Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.

- **Principle 7**. The laws, regulations and measures under which the statistical systems operate are to be made public.

- **Principle 8**. Coordination among statistical agencies within countries is essential to achieve consistency and efficiency in the statistical system.

- **Principle 9**. The use by statistical agencies in each country of international concepts, classifications and methods promotes the consistency and efficiency of statistical systems at all official levels.

- **Principle 10**. Bilateral and multilateral cooperation in statistics contributes to the improvement of systems of official statistics in all countries.

We have not proposed options that would put New Zealand outside of international norms and obligations, as these could have detrimental impacts on New Zealand's international standing.

2.5 What do stakeholders think?

In September 2018 the Minister of Statistics and the Government Statistician released *Towards new data and statistics legislation: public discussion document*. The discussion document presented high-level proposals for new data and statistics legislation that would provide a consistent approach to the production of official statistics, and the safe management and use of government data for research and analysis. It also discussed effective governance of the data system and outlined roles for carrying out governance functions.

The consultation period closed on 9 November 2018. During the consultation Stats NZ heard from close to 600 people through formal submissions (28) and an online poll (567 with 116 of those also answering the optional free text "tell us anything" question). In addition to individuals, submissions were received from:

- Māori organisations including Iwi
- Councils
- Universities
- International statistical and data organisations

Overall submitters supported the proposals for new data and statistics legislation.

Submitters were very clear they considered it important New Zealand has high quality official statistics that can be relied upon and also that government-held data is safely shared and used for research and analysis to benefit New Zealanders. Key areas of focus for submitters included:

- the importance of data and statistics that meet the needs of Māori and reflect Māori worldviews, values, and realities,
- support for the best available data source being used to produce quality official statistics, recognising that greater use of administrative data would reduce financial pressures on government, reduce the burden of supplying data to government, and improve the quality of that data,
- sharing data across government for research and analysis that would result in increased transparency, better informed policy development, reduced duplication, and provide a more complete picture of people and communities.

Other feedback from stakeholders

Alongside formal public consultation, Stats NZ has regularly met with stakeholders to discuss issues and opportunities they encounter in their interactions with government, and which have fed into the review of data and statistics legislation.

Business

Businesses generally note frustration with repeatedly having to providing the same information to government. Stats NZ recently tested with a small sample of businesses their appetite for publicly releasing more information about businesses. Key findings were

- Most businesses would not be concerned to hear that Stats NZ was considering releasing additional business information, but participants would be surprised if individualised information was released.

- Some businesses were keen to have access to more detailed and up-to-date business information from Stats NZ.
- Concerns were mostly about the potential release of individualised data that may benefit competitors, such as financial data. These concerns would be allayed if:
    - Information was known to be anonymised
    - There were opportunities to opt-out
    - There were clear guidelines around usage and security of data.

Māori

Stats NZ is continuing to work with Māori and iwi organisations who have informed the development of the preferred approach, to ensure that the Bill as drafted appropriately reflects the principles of the Treaty of Waitangi. As well as the public consultation discussed above, the preferred approach has 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.

Integrated data users

The way that researchers are using integrated data has changed since the establishment of the IDI, and the broader demand for data-driven evidence has grown stronger. Uptake of Stats NZ Data Lab services (Data Lab is the portal through which users access integrated data) has increased quickly in recent years. Feedback from users of the IDI has informed the preferred approach, including the need to keep strong protections and safeguards, the need for transparency and the need to enable more opportunities for access by government agencies to test and develop policy.

Section 3: Option identification

3.1 What options are available to address the problem?

Reviews of regulatory performance have noted that, amongst other key criteria, effective regulatory performance is dependent on good law. The practice of 'set and forget' regulatory policy was one of the common elements of concern that the NZ Productivity Commission observed about regulatory policy and practice in New Zealand.

The 1975 Act is focussed primarily on official statistics, and related survey and census activities. It's provisions in those areas are outdated. Furthermore, the current Act's provisions are variously insufficient or lacking in the areas needed to fully enable the required data arrangements essential to support a modern data and statistics system.

Figure 1 summarises the intervention logic linking the specific elements of the proposed legislative reform to the expected impacts and improved conditions identified as important in maintaining and improving the system assets. In turn these assets enable quality statistical and information products that are used in a variety of high value decision-making contexts.

Figure 1: Statistics Act Reform – Intervention Logic

Use-cases:	Domestic/International	Public/Private	Social	Environmental	Economic

Products:	Official Statistical Series		Information from Research and Analysis	
System Assets:	Quality Administrative, Survey and Census Data underpinning Official Statistics		Useable Administrative, Survey and Census Data for Research and Analysis	
Desired System Conditions:	Reduced Respondent Burden	Increased Public Trust	Increased Clarity of Expectations	Consistent Collection of Similar Data
Impacts:	Maintain/Improve Survey and Census Coverage	Maintain/Improve Survey and Census Response Rates	Maintain/Improve Availability of Administrative Data	Maintain/Improve Quality of Administrative Data
Main elements of the proposed legislative modernisation and reform	***Collecting Quality Data*** Aligning the statute with modern survey and census design and management practice	***Proportionate Obligations and Sanctions*** Providing more effective incentives through clearer obligations and a modern regime for sanctions	***Access for Research and Analysis*** Modernise the access regime so that it is efficient and increases confidence in privacy and confidentiality	***Consistency, Comparability and Coherence*** Enabling greater prioritisation of efforts to close data gaps, access existing administrative data and set clear standards to improve the consistency of data and statistical practices

As set out in the table above options for addressing the problem have been considered in relation to the following four key policy issues:

- Issue 1: collecting quality data
- Issue 2: consistency, comparability and coherence
- Issue 3: access to and use of government-held data for research and analysis
- Issue 4: proportionate obligations and sanctions.

Our proposed package envisages that together the preferred options set down below addressing each issue will prevent the erosion of system value and will over time result in substantial downstream benefits, including —

- reduction in respondent burden (individuals, households, businesses and other organisations)
- more efficient collection of data and reducing unnecessary duplication of data held by government

- more effective and trusted access to, and use of, underlying data and statistical assets to benefit New Zealanders

- improved coverage, quality, and relevance of data and statistics.

Issue 1: Collecting quality data

Quality data is needed to produce quality official statistics and to ensure the information needs of decision makers and other users of government-held data, such as iwi and Māori are met.

Status quo

The status quo retains the Government Statistician's powers to—

- access administrative data to produce statistics, but with little ability to influence quality or sustainability, and
- to survey respondents where required, but with limited opportunities to adapt collection methodologies to accommodate the multiple ways people communicate.

There would remain limited opportunities for the Government Statistician to share data collected under the Act with other producers of statistics, and continued reliance on goodwill to consider and provide opportunities for Māori to inform data collection and information needs.

Modernise and update

The preferred approach is to modernise and update provisions in the Statistics Act relating to the collection and sharing of quality data and statistics. Under this option, the new Act would—

- clearly set out the Government Statistician's power to access administrative data (subject to any enactment to the contrary)
- enable the Government Statistician to use data collection methodologies which limit the burden on individual, household, business or other organisations who must respond to those requests (removing the reliance on survey instruments)
- require producers of official statistics to provide opportunities for Māori to inform data collection and statistical outputs.
- authorise the collection of data by another agency on behalf of the Government Statistician if that agency is best placed to do so (consultation and agreement between agencies would be necessary).
- enable more value from use of non-sensitive statistical data by modernising and updating statistical confidentiality exceptions.

Prioritise statistical needs for administrative data collection

This option would require government agencies who produce statistics using administrative data, or who have administrative data that is used by Stats NZ to produce statistics, to prioritise the statistical need over other considerations when collecting that data. The Government Statistician would determine the quality standards required and agencies would have corresponding obligations to comply. All legislative barriers that unnecessarily restrict sharing administrative data with Stats NZ would be removed.

Issue 2: Consistency, coherence, and comparability

Inconsistent data and statistical practices across government impact on the consistency, coherence and comparability of data and the statistics, research and analysis able to be produced

from it. Statistics, research and analysis often rely on being able to combine data from a range of data sources and the system faces increased costs or unnecessarily delays where data needs to be 'cleaned' before it can be used. Use of different concepts, procedures, definitions and classifications can also lead to decision makers and other users of data and statistics receiving conflicting advice or information.

Status quo

The status quo retains the Government Statistician's powers to define and promote the standard concepts, procedures, definitions and classifications for use in official statistics, and the Cabinet-level mandate for Tier 1 Statistics producers to comply with the *Principles and Protocols of Official Statistics*.

Agencies that produce statistics that are not Tier 1, and that voluntarily followed statistical best practice would likely continue to do so, while other agencies may continue not to do so unless obliged to. Over time, there is a risk that continuing to provide for an antiquated authorising framework leads to a reduction in coherency, consistency and comparability of data collected across the system.

Modernise and update

The preferred option is to modernise and update provisions in the Statistics Act so that the Government Statistician can endorse, define, and promote best practice requirements for the data and statistics system to improve consistency, coherence and comparability of data and statistics. The Government Statistician would do so after advice from relevant producer agencies, data users and data providers. Where standard concepts, procedures, definitions and classifications exist already, the Government Statistician may endorse these for wider use. This option would include corresponding obligations on producing agencies to observe best practice and other standards endorsed by the Government Statistician. This would in extend the current Cabinet level obligation on Tier 1 producers into statute.

Centralise statistical production

This option would centralise production of priority data analysis and statistics in Stats NZ and require Stats NZ to design and administer all statistical surveys. Agencies would continue to be required to provide administrative data to Stats NZ and be able to inform the statistical work programme.

Issue 3: access to and use of government-held data for research and analysis

Data is shared and integrated by Stats NZ to support public interest research and analysis, however the legislative provisions enabling this are antiquated and lack the necessary transparency. This limits opportunities for government-held data being used for research and analysis to benefit New Zealanders with a concurrent risk that trust and confidence in government use of data is diminished.

Status quo

Stats NZ would continue to be able to receive and integrate data for research and analysis but would continue to rely on operational policies to guide decisions by the Government Statistician on public interest and access. Stats NZ would continue to be required to apply the same

confidentiality settings for all statistical information it collects and therefore treat all data received as equally sensitive, even where this may not be necessary.

Modernise and update

The preferred option is to modernise and update provisions in the Statistics Act that enable Stats NZ to receive, integrate and provide access to data for research and analysis. This would create a clear and transparent framework designed on international best practice and tikanga considerations.

It would retain the public interest test but provide for relevant considerations[9] to guide access decisions within a framework containing safeguards addressing what the data can be used for; who can access the data; how the data can be accessed; what level of confidentiality is applied to the data before access; and what results can be published. It would also require agencies who wish to share information for research and analysis to consider the benefits of sharing with any associated risks.

It would enable organisations outside of government to share information they hold with government when there is benefit in doing so for research and analysis, and it would allow the Government Statistician to agree conditions for decision-making about access.

It would also allow access to identifiable data shared with Stats NZ if access to that information from the source agency is lawfully authorised and if the source agency agrees.

Obligation to provide data for research and analysis

This option would include the proposals described in the preferred option (modernise and update) but would add an obligation to share data for research and analysis when required to by the Government Statistician and if doing so would be in the public interest. Public interest would be determined by the Government Statistician with relevant considerations set out in legislation and with the additional check requiring Ministerial approval.

Issue 4: proportionate sanctions

Regulatory systems require proportionate sanctions including credible disincentives and opportunities to address non-compliant behaviours.

Status quo

Criminal penalties for breaches of the obligation to respond to statistical surveys when required to do so by the Government Statistician and of the obligation to protect the information collected under the Act would continue. Maximum penalties would remain at 1982 levels ($500 for an individual and $2,000 for a body corporate). Stats NZ would continue to encourage and support people to comply with their obligations under the Act.

Modernise and update

Criminal offences would be modernised and penalties would reflect the seriousness of the misconduct and be increased to align with comparable offences across the statute book. Simple

9 These include the nature and extent of any likely benefit, the nature and extent of associated risks or harms, and the context of the data collection.

failures to comply with requirements to provide information would be punishable by new lower maximum penalties when compared to breaches of obligations to protect the data provided.

Add infringement and compliance notices

In addition to modernising and updating penalties for criminal-level offending, the preferred option would substitute an infringement notice regime for simple failures to provide information and a compliance notice regime for 'fixable' non-compliance with requirements to protect the data provided.

3.2 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

The criteria used to assess the likely impacts are:

- **Value** – maximising opportunities to benefit New Zealanders from trusted use of government-held data through statistics, research and analysis.
- **System integrity** – the resilience and sustainability of the data and statistics system to ensure that prioritised information needs continue to be met.
- **Efficiency** – reducing unnecessary duplication, improving quality and lessening respondent burden and avoiding unnecessary cost.

There are instances where ensuring system integrity will involve trading off against increasing value and improving system efficiency. This is most apparent in the policy settings for statistical confidentiality which prescribe necessary limitations to the re-use of statistical data for non-statistical purposes such as law enforcement or regulatory compliance.

Without these limits, the future supply of data for needed to meet priority information needs through statistical production and research and analysis would be at risk. Individuals and entities would be discouraged from responding, or responding accurately, to requests from the Government Statistician. The corresponding data coverage and quality issues could have significant consequences for decision-making domestically with repercussions internationally.

3.3 What other options have been ruled out of scope, or not considered, and why?

Sharing identifiable data for law enforcement, enforce regulatory compliance, or to make operational decisions affecting an individual was ruled out early on in the review for the reasons discussed in 3.2 above. The same outcome was reached in Australia where they are also considering new legislation to support trusted data use to support decision-making. In addition, statistical confidentiality is a fundamental principle of statistical production and New Zealand's high standing with other statistical producers may be irreparably damaged if we derogated too far from internationally agreed norms.

Regulating statistics produced outside of government was also ruled out, although over time and given the updated legislative framework, it may be possible to consider a regulatory regime whereby these type of statistics could be designated as of sufficient quality by the Government Statistician. In the shorter term, the ability of the Government Statistician to comment on any published statistic provides for a degree of moderation.

There is also ongoing work with data providers to ensure continued supply and to test innovative new products such as through the work of Data Ventures (Stats NZ's commercial arm) to produce a population density tool using aggregated mobile phone data.

We also considered whether the Chief Executive's functional leadership role of Government Chief Data Steward (GCDS) should be a statutory role given that some functions overlap with those of the Government Statistician, particularly those that require a system-level focus. However, some aspects of the GCDS role go beyond the scope of the proposals in the package. For example, the GCDS has established a Data Ethics Advisory Group to provide advice to agencies in relation to proposed data uses, including compliance and law enforcement. Alignment with other functional leadership roles, accommodating proposed changes under the Public Sector Legislation Bill, and allowing the maximum flexibility to respond to emerging issues were all considered more desirable than creating a new role under these legislative proposals.

The current legislation provides for Stats NZ to be a Government Department. While this was a common type of legislative provision in Acts of this era (prior to the State Sector Act), it is less common now. In assessing the provisions of the 1975 Act some early consideration was given to whether a different organisational form (such as an independent Crown Entity) for Stats NZ would address the problems identified. However, given international best practices relating to the need for clarity and transparency about leadership and roles within a National Statistics system, the nature of New Zealand's data and statistics system, and the exercise of coercive data collection powers by the Government Statistician on behalf of the State, this option was discounted.

Section 4: Impact Analysis

Issue 1: Collecting quality data

	Status quo	Modernise and update	Prioritise statistical needs for administrative data collection
Value	**0**	**+** Removes existing barriers to data collection for statistical purposes and improves access to the most appropriate data source	**++** Removes existing barriers to data collection for statistical purposes and improves access to and the quality of the most appropriate data source
System integrity	**0**	**++** Ensures a system level focus on data collection	**+** Ensures a system level focus on data collection but could be at the cost of the data needs of specific agencies
Efficiency	**0**	**++** Reduces duplication of data and over time would reduce respondent burden. Cost of providing data to government would reduce	**0** Reduces duplication of data but may require agencies to collect more data than they need to deliver direct services impacting both agencies and the people, businesses and other organisations they interact. While there would be fewer requests for data directly from the Government Statistician, costs of providing data would likely remain the same because agencies would need to collect more data at source
Overall assessment	**0**	**++ Preferred option** Aligns with system leadership and co-ordination functions and prioritises access to data including that collected for other purposes	**+** Less alignment with system leadership and co-ordination functions as it priorities statistical production over agencies' core business, risking delivery of agencies primary functions

Key:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
- -	much worse than doing nothing/the status quo

Issue 2: Consistency, coherence, and comparability

	Status quo	Modernise and update	Centralise statistical production
Value	0	++ Increases the ability to provide high quality data and statistics to decision makers and other data users	+ Increases the ability to provide decision makers and other data users high quality data and statistics but risks lowering the quality of the insights and analysis through loss of subject matter understanding
System integrity	0	++ Ensures a system level focus on best practice	+ Ensures best practice but would take longer to implement
Efficiency	0	++ Reduces data duplication, increases quality and over time would reduce respondent burden Cost of providing data to government would reduce over time	- Reduces data duplication, increases quality and over time would reduce respondent burden There would be substantial financial costs incurred by the Crown
Overall assessment	0	**++ Preferred option** Aligns with system leadership and co-ordination functions and prioritises best practice	+ Aligns with system leadership and co-ordination functions, prioritises best practice but incurs substantial financial costs and risks lowering quality of insights and analysis

Key:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
- -	much worse than doing nothing/the status quo

Issue 3: Access to and use of government-held data for research and analysis

	Status quo	Modernise and update	Obligation to provide data for research and analysis
Value	0	++ Increases transparency, certainty and accountability	++ Increases transparency, certainty and accountability
System integrity	0	++ Enables greater system level sharing of data to meet new and emerging information needs	+ Ensures system level sharing of data to meet new and emerging information needs but agencies may be more unwilling to share except when required to
Efficiency	0	+ Increases quality. Cost of providing data to government would reduce over time	+ Increases quality. Cost of providing data to government would reduce over time
Overall assessment		**++ Preferred option** Aligns with system leadership and co-ordination functions and prioritises safeguards and protections for research and analytical use of government-held data	+ Aligns with system leadership and co-ordination functions, prioritises safeguards and protections for research and analytical use of government-held data

Key:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
- -	much worse than doing nothing/the status quo

Issue 4: Proportionate responses

	Status quo	Modernise and update	Add infringement and compliance notice
Value	**0**	+ Increases accountability and supports trusted use	+ Increases accountability and promotes trusted use
System integrity	**0**	+ Encourages compliant behaviours	++ Encourages and supports compliant behaviours
Efficiency	**0**	+ Increases quality Crown likely to incur costs through increased prosecution but these would be offset by the resulting lift in compliance	+ Increases quality Crown likely to incur costs from new regime but these would be offset by the resulting lift in compliance and as it would be able to reserve taking criminal proceedings only for serious misconduct
Overall assessment		+ Somewhat aligns with best practice for proportionate sanctions to support compliance with statutory obligations	**++ Preferred option** Aligns with best practice for proportionate sanctions to support compliance with statutory obligations

Key:

++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
- -	much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

Stats NZ recommends modernising and updating the current legislation rather than introduce significant structural change or significant new coercive powers across the system. We view the proposals to change obligations and sanctions under the legislation as modernisation, rather than extension. The recommendation rests on the analysis that moderate system benefits will flow from modernising the legislative framework, at very low cost. The only substantive extension to the legislation are the proposals to recognise Māori data and statistics interests, consistent with developments in other areas.

This approach is also preferred as it is provides a legal framework that meets domestic and international expectations of best practice, enables action to lift the quality of data and statistics needed to inform decision making, and increases transparency and accountability. It also removes the risk of gradual erosion of quality which could lead to significant reputational and financial risk if the status quo is maintained.

The proposed package does not significantly impact on existing respondent (individuals, households, businesses and other organisations) obligations to respond to requests for data from the Government Statistician but may reduce the burden of doing so over time as the quality and accessibility of administrative data increases.

The proposed package supports the Crown's responsibilities to consider and provide for Māori interests in data and statistics and will support stronger partnerships and greater participation with and by Māori in the data and statistics system.

Across all stakeholder groups there is broad support for the proposed approach with key areas of focus being the importance of:

- recognising the relationship between Māori and the Crown in respect of data and statistics, including working with Māori to ensure that data and statistics meet the needs of Māori and the importance of iwi data being available to iwi
- data as a strategic asset and the ability of the Government Statistician to set standards and issue directives to help ensure continuity of data and quality of statistics, while recognising the administrative burden for organisations and the diverse context and statistical capabilities across government agencies
- professional independence exercised by the Government Statistician so that the processes and procedures used to produce statistics are exercised independently from individual stakeholder interests:
- modernising the current provisions relating to data sharing for research and analysis that is in the public interest, with associated benefits of better-informed policy development, efficiency through reducing duplication, and enabling a more complete picture of people and their communities
- protecting privacy and confidentiality and requiring transparency about what data is held, shared and linked, and what research and analysis is being undertaken and by whom

- proportionate and more effective sanctions for non-compliance with statutory obligations.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties *(identify)*	**Comment**: *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts*	**Evidence certainty** *(High, medium or low)*
Additional costs of proposed approach, compared to taking no action			
Regulated parties—data providers	Costs on data providers will remain similar to status quo, as obligation to provide data for official statistics will remain. But the costs associated with non-compliance will be more proportionate and targeted towards those whose failure to meet obligations causes the greatest harm. Those individuals and organisations can adjust their behaviour to comply with their obligations and reduce the cost of any sanctions.	No net cost impact	High
Regulators	Modernised obligations and sanctions regime is expected to have small implementation costs, and result in more effective compliance with obligations by regulated parties.	Low cost impact	High
Wider government	The proposals set out in this package are fiscally neutral at a system/all of government level, and are expected to result in an unquantified net fiscal benefit to the Crown over time as the system becomes more reliable and efficient. At some future point there may be additional costs for an individual agency associated with the proposal to authorise government agencies to collect data on behalf	No net cost impact	High

	of the Government Statistician that they otherwise would not collect. These costs are expected to be marginal and would normally be met within agency baselines. Stats NZ is committed to working with affected agencies to mitigate the impact of these costs if they were to be significant for the agency.		
Total Monetised Cost	Not possible to quantify		
Non-monetised costs		No/Low cost impact	High

Expected benefits of proposed approach, compared to taking no action			
Regulated parties –data providers	Overall respondent burden will be better managed across the system. Compliance rates are likely to improve.	Moderate benefit over time	Moderate
Regulators	More effective tools to enforce compliance with obligations will result in better compliance with obligations.	Moderate benefit over time	High
Wider government	More effective coordination and leadership of the data and statistics system will improve the value of government-held data and statistics. Improved efficiency, protections and transparency of the use of data for statistics and research and analysis will increase public trust and confidence in the data and statistics system. Data for official statistics is likely to be collected more efficiently across the system.	Moderate benefit over time	Moderate
Total Monetised Benefit	Not possible to quantify.		
Non-monetised benefits		Moderate benefits over time	Moderate to High

5.3 What other impacts is this approach likely to have?

The impacts of our proposals resulting from increased opportunities for innovation and new knowledge creation are largely unforeseeable, but they are expected to lead to benefits we have not realised yet. For example, potential use of the LBD to contribute to the evidence base underpinning the Government's response to the Trade for All Advisory Board's report could lead to a better understanding the impacts of trade on productivity, sustainability, and inclusivity in New Zealand's economy. And research conducted in the IDI to explore the connection between the natural environment and asthma has the potential to reduce healthcare costs, target funding, and improve the wellbeing of people who suffer from asthma.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

The preferred options require amendment of primary legislation. Stats NZ has secured space on the Government's 2020 legislative programme for a Bill. While significant parts of the policy intent remain consistent with the policy intent for the current legislation, Parliamentary Counsel Office has advised that to properly update and modernise the Statistics Act 1975 the Act will need be repealed and replaced with a new Act that reflects modern legislative drafting practice and provisions. Before the Bill is introduced Stats NZ will work with the Ministry of Justice and the Parliamentary Counsel Office to ensure the level of penalties are appropriate, proportionate and fair, and are consistent with modern best practice and comparable offences. On current timeframes the earliest commencement date for the new legislation would be the end of 2021, which leaves sufficient time to detailed implementation design and delivery plans to be developed and put into operation. Most of the proposed policy in this package does not change the primary intent of current statistics policy, as provided for in the current Statistics Act. It is also consistent with much of the existing work and practice across the system currently designed to improve data and statistical capability and outputs. There is, however, a considerable quantity of descriptive and guidance material that references the current Act and its specific provisions that will have to be updated, and a body of key stakeholders who will need to be made aware of the changes.

While detailed implementation plans will be developed in parallel with the Bill's passage through the House, implementation of proposals will require activity in specific areas:

- Updating and providing advice to government agencies in relation to new obligations to follow best practice. Most current producers of official statistics will be aware of, and follow, the current Tier 1 Cabinet requirements to follow best practice. Communications and guidance will need to be produced to support agencies to observe this obligation to coincide with the passage of new legislation. It will need to be complete and available at the time the new provisions take effect,

- The modernised arrangements allowing the Government Statistician to formally authorise other government agencies to collect data on behalf of the Official Statistics System they would not otherwise collect will require an operating policy and supporting administrative arrangements to give the new provisions consistent effect. The first stage of implementation will require Stats NZ to work with agencies to identify any immediate instances where data could be collected more efficiently at the most logical collection point. This work can be undertaken after the legislation comes into force. Current assumptions are that while there may only be

one or two instances where these authorisations are needed, they involve data collection that is an important input for a wide variety of decision makers, and we expect that these new arrangements would need to be fully operational within a year of enactment.

- Modernised obligations and sanctions; operating the new sanctions regime will require Stats NZ to update its regulatory approach including provisions for the use of lower level enforcement tools. Stats NZ will need to update its prosecutions policy, prepare new systems, and produce guidance material and communications to support this change. This work needs to take place before the new provisions take effect.

6.2 What are the implementation risks?

Maturing Stats NZ's role as a regulator

Stats NZ will need to mature in its role as a regulator in respect of operating a modern offences and penalties regime that is different to the status quo. A range of reviews of regulatory practice across a wide range of regulators and jurisdictions over recent years (e.g. by the NZ Productivity Commission) have observed a number of common failings. Poor quality law is one common problem that these proposals will address. As an operator of an updated regulatory regime, Stats NZ will need to mitigate the risk seen in other areas where new regulatory requirements operate in a partial and piecemeal fashion (because of resource constraints, inadequate regulatory operating models and inexperience) thus undermining the intention of the new provisions. Mitigating this is Stats NZ's ability to access expertise and experience from the now much more active regulatory networks within the NZ Public Service.

Data breaches

With the use of, and access to, information about people, households, and organisations there is always a risk of a privacy or information breach. A potential future data breach may be unrelated to the proposals for new data and statistics legislation but could affect public confidence and trust in government's management of data and information more generally, thus undermining one of the expected benefits of legislative reform.

Consideration of these risks is not new, and protections and safeguards are built into the proposed rules. The proposal is not considering altering the obligation on Stats NZ staff and other people who come into contact with information collected under statistics legislation to keep that information secure and use it only in accordance with the law.

Risk adverse and resource constrained behaviour means practices don't change sufficiently

Our proposals aim to increase transparency around how data is collected and used for official statistics and research and analysis, to maximise the reuse of data, and to implement a more mature framework. But there is a risk that very conservative or resource constrained behaviour results in insufficient change. This risk can be mitigated by ensuring greater transparency of research and the benefits that derive from it.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The Government Statistician leads the official statistics system and coordinates statistical activity across government. To this end, the Government Statistician drives overall performance, provides direction to, and engages with, other producer agencies on minimising duplication and maximising reuse of data, and ensures New Zealand gets the information it needs, at the lowest possible cost to government, the community, and suppliers of data.

This will continue under new legislation and will be enhanced by the legislative support requiring people with critical responsibilities to ensure they meet statistical standards and data quality characteristics, as well as to act collectively to address the burden on respondents. The standing requirements to conduct a review after each Census cycle will be retained. Customer feedback from users of shared data infrastructure provided by Stats NZ will also provide ongoing monitoring data on the degree to which the new legislative provisions are positively impacting research and analysis.

The Regulations Review Committee would also have a role in monitoring and reviewing any regulations made. The Committee examines all regulations, investigates complaints about regulations, and examines proposed regulation-making powers in bills for consistency and good legislative practice. The Committee reports to the House and other committees on any issue it identifies. The House can "disallow" a regulation, meaning it no longer has force.

7.2 When and how will the new arrangements be reviewed?

As part of its role in administering the new data and statistics legislation, and in addition to its ongoing leadership and co-ordination functions, Stats NZ will review the effectiveness of the new legislation in supporting improvements:

- A post implementation review will be conducted by Stats NZ to ensure all the implementation actions (including operational, policy and communication activities) have been completed (by the end of 2023, following the next Census, or if the Bill is not enacted before mid-2022, 18 months after enactment)
- The Census Review conducted after the next Census will include a review of the impact of the new Census provisions, and the obligations and sanctions provisions provided by the new legislation (review expected to be completed by 2024).
- Most of the other provisions of the new legislation are expected to support improvements over time. The benefits of the new legislation will, in part, be triggered when government agencies make planned improvements to their data collection, management and sharing systems and processes. The most significant of these changes typically occur every five to ten years depending on the systems involved. A review of the broader impact of the new legislation will be completed by 2028, when we would have expected a representative selection of system changes will have been implemented to allow an indicative assessment of the impact of the new legislative provisions.