

Report

Proposals for amending the Data and Statistics Act

Date:	23 July 2025	Security Level:	In confidence
To:	Hon Dr Shane Reti	Report Number:	MM3003

Purpose of the report

This report seeks your direction on options to amend the Data and Statistics Act 2022 to give effect to the new approach to census, including addressing the census-related interactions between the Data and Statistics Act 2022 and the Electoral Act 1993. Your decisions in this briefing work in conjunction with decisions in MM2970.

Executive summary

Following Cabinet endorsement on 12 May 2025 to modernise the census, we sought your agreement to the proposed approach to progressing the Data and Statistics (Census) Amendment Bill (the Bill) [MM2970 refers].

We have been working through options related to the workability of the new census provisions for Electoral Act purposes. On 14 July 2025, we discussed some of the options with you. Since then, we have progressed further with the Office of the Clerk and the Ministry of Justice. This briefing provides you with an update on the available options and the impact of those options on constitutional matters in the Electoral Act.

We recommend a staged approach, starting with option 2—amending the Data and Statistics Act 2022 (the Act) by replacing the five-yearly census with an annual census from 2030, and in addition, amending the Electoral Act (for example in the interpretation section), to redefine census in that Act to be ‘a census taken in every fifth year’ (or similar).

Stepping through the staged approach would mean testing a draft Bill with the Office of the Clerk. If the Office of the Clerk advises that option 2 amendments engage entrenched provisions, you could either:

- determine whether you would achieve 75% support of the House before introducing the Bill; or
- remove the conflicting provisions and progress the Bill without them. At a minimum, a Bill needs to defer the next census until 2030.

A key consideration is the risk of the Bill not passing prior to the 2026 election. The Bill holds a category 4 priority on the 2025 Legislation Programme (to be passed by the end of 2025 if possible) because of the need to provide early certainty for Stats NZ on timing for the next census. If the Act is not changed in 2026, we may need to consider the approach to delivering a census in 2028.

Recommendations

- 1 **Indicate**, by Monday 28 July, which legislative option as outlined in the body of this paper you would like to progress for the Data and Statistics (Census) Amendment Bill:
 - 1.1 Option 1 – Replace the five-yearly census with an annual census from 2030, and in addition, amend the reserved provisions in the Electoral Act to create a new trigger for the division of New Zealand into electorates
Agree/Disagree
 - 1.2 Option 2 – Replace the five-yearly census with an annual census from 2030, and in addition, define in the Electoral Act that a census for electoral purposes is a ‘census taken in every fifth year’ (for example, by amending the interpretation section)
Agree/Disagree
 - 1.3 Option 3 – Retain the five-yearly census, from 2030, and in addition, require the annual publication of statistics about the population and dwellings (not being the census)
Agree/Disagree
 - 1.4 Option 4 – Retain the five-yearly census, from 2030, and make no other changes
Agree/Disagree
- 2 **Note** that options 1 and 2 fully implement the new annual approach to census endorsed by Cabinet in law and option 3 partially implements it in law
Noted
- 3 **Note** that we recommend option 2 and testing with the Office of the Clerk through a draft Bill whether the amendments change the legal effect of the Section 35 reserved provision in the Electoral Act
Noted
- 4 **Note** that if the Office of the Clerk affirms the reserved provisions are engaged, a further decision can be made on how to progress the Bill including:
 - 4.1 determining before the Bill is introduced whether you would achieve 75% support of the House at the Committee of the Whole House stage, or,
 - 4.2 removing the conflicting provisions and progress the Bill along the lines of option 3, or 4 (stepping through each stage)**Noted**
- 5 **Note** that option 4 would not reflect the shift to an annual census endorsed by Cabinet in law, with the modernised census instead being operationalised by the Government Statistician
Noted

- 6 **Note** that we will provide you with an updated timeline on 30 July 2025 for seeking Cabinet approval for the introduction of the Bill
- Noted**
- 7 **Note** we have worked with the Ministry of Justice on the options in this paper, and tested their viability with the Parliamentary Counsel Office
- Noted**



Tennille Maxey
General Manager – Policy

23 July 2025

Date

Hon Dr Shane Reti
Minister of Statistics

Date

Background

- 1 On 12 May 2025, Cabinet endorsed the Government Statistician’s decision to modernise the census and authorised the Minister of Statistics to approve amendments to the Act so that it better reflects the new approach (CAB-25-MIN-0157).
- 2 Cabinet noted that an amendment bill is required to defer the next census from 2028 to 2030, and at the same time there are opportunities to future-proof the Act to reflect a modernised, admin data-first approach to future censuses.
- 3 Cabinet noted census modernisation will have electoral implications because the “periodical” (five-yearly) census is a trigger for electoral processes. The Minister of Justice was invited to report back in 2025 on any necessary or desirable amendments to the Electoral Act 1993 as a result of the census modernisation (CAB-25-MIN-0157).
- 4 On 25 June 2025, we sought your agreement to amend the Act to reflect the shift to an annual census in law, including:
 - setting out that the Government Statistician must publish a census of population and dwellings in New Zealand, annually, from 2030
 - removing the requirement for the Government Statistician to take a census every five years (reflecting the continuous nature of data collection under the new approach)
 - making consequential changes to other sections to reflect the key shift away from five-yearly data collection through a full enumeration survey, for example, removing the requirement for the Governor General to set the period during which the census will be taken, and adjusting timeframes for requirements to engage with Māori and consult with the public and others with an interest.
- 5 As noted in the June 2025 briefing, we undertook to work with Parliamentary Counsel Office (PCO) on options related to the workability of the new census provisions for Electoral Act purposes [MM2970 refers].

Census is a trigger for constitutional processes in the Electoral Act 1993

- 6 Taking and completing the (periodical) census and other actions relating to a “counting day” triggers Electoral Act processes:
 - ending the term of office of the five appointed members of the Representation Commission (on the date of the first “periodical census” after the date of appointment)
 - calculation of the General and Māori electoral populations (as soon as practicable after “counting day” – the day of the census)
 - beginning, after new appointments, the Representation Commission’s work to divide New Zealand into General and Māori electoral districts (after a “periodical” census and on no other occasion) (sections 35 and 45).
- 7 While “periodical census” is not defined, the “census” is defined in the Electoral Act as the census of population and dwellings taken under the Data and Statistics Act. Parliament likely expected boundary reviews to happen every five years, this being the well-established census cycle when the Electoral Act was passed.

The link between the census and division of New Zealand into electorates is entrenched

- 8 Section 35 of the Electoral Act outlines the process for the division of New Zealand into electoral districts after each census. It is an entrenched (or reserved) provision meaning its legal effect¹ can only be amended with a 75% majority of all members of the House or having been carried by a majority of votes in a referendum.²
- 9 This majority is determined at the Committee of the Whole House stage. Where there is subjectivity about whether or how this requirement should be applied, the Speaker has ruled that they will prefer the approach that is least likely to lead to a legal challenge about whether the law is validly made.³ 9(2)(g)(i)
- 10 The Ministry of Justice advises us it is good constitutional practice that amendments with electoral implications have broad public and political support, regardless of whether reserved provisions are involved. We understand Members of Parliament commonly take a collegial approach to these issues when they arise; for example, the most recent example of amending an entrenched provision was the Electoral (Māori Electoral Option) Legislation Bill 2022,⁴ and the relevant vote passed unanimously.

Options for progressing census modernisation given intrinsic link to the Electoral Act 1993

- 11 As discussed with you on 14 July 2025, we have been investigating the feasibility of different options to amend legislation, including discussions with the Ministry of Justice and the Office of the Clerk. 9(2)(g)(i)

- 12 The broad options are as follows:

Options 1 and 2 address the interaction between the Acts while moving to an annual census

Option 1 – Amend the Act by replacing the five-yearly census with an annual census from 2030, and in addition, amend the reserved provisions in the Electoral Act (through the Data and Statistics (Census) Amendment Bill) to decouple the census from electoral processes and put in place a new trigger and timing settings.

Option 2 – Amend the Act by replacing the five-yearly census with an annual census from 2030, and in addition, amend the Electoral Act (for example the interpretation section) to redefine census in that Act to be ‘a census taken in every fifth year’ (or similar).

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- 1 The test is not whether the text of a reserved provision is amended, but whether the amendment alters the legal effect of the reserved provision. This means that if a law change (in any Act) changes how the entrenched rule will work in practice, or applies in real life, the entrenched provision is engaged.
- 2 While a referendum is a technical option, the Ministry of Justice does not consider a referendum on boundary review processes is desirable.
- 3 Speakers’ Rulings 247/5 (2023 edition).
- 4 This Bill changed the Māori Electoral Option from a four-month period to a continuous option.

Options 3 and 4 do not address the interaction between the Acts and instead maintain a five yearly census

Option 3 – Amend the Act to retain the current five-yearly census, from 2030. In addition, require the annual publication of statistics about the population and dwellings, and remove provisions in the Act that are predicated on a full enumeration census.

Option 4 – Amend the Act to retain the current five-yearly census, from 2030. No other changes would be made.

- 13 Additional factors considered for the options analysis include timeliness, transparency and practicality or workability. The table below assesses the options against these different considerations. More detail is in Appendix 1.

Option	Considerations					
	Modernised annual census in legislation	Transparent about electoral matters	Engages entrenched provision	Enduring fix	Act passed before 2026 election	Decisions in briefing MM2970 apply
1	Yes Census published annually from 2030 provided in legislation	Yes Link between census and electoral matters addressed	Yes Changes engage the trigger; but likely to have Ministry of Justice's support in this process	Yes Statistics legislation and link between census and electoral process modernised	No Requires further Cabinet decisions about the link between the Acts to proceed	Yes Consistent with prior recommendations
2	Yes Census published annually from 2030 provided in legislation	Yes Link between census and electoral matters addressed	Potentially We are testing options to preserve the status quo	Partially Statistics legislation modernised and link between census and electoral process maintained	Yes More work prior to introduction but no expected barrier to passing a Bill in first half of 2026	Yes Consistent with prior recommendations
3	Partially Census taken five-yearly from 2030; other statistics published annually	No Retains electoral status quo but may not transparently achieve policy objectives	Potentially to Unlikely More likely to preserve the status quo than Option 2	No Statistics legislation not modernised but link between census and electoral process maintained	Yes No expected barrier to passing a Bill in first half of 2026	Partially Does not move to an annual census in law but implements substance of Cabinet's decisions
4	No Census taken five-yearly from 2030; no requirement to publish annual statistics; no other changes made	No Retains electoral status quo but may not transparently achieve policy objectives	Highly Unlikely 2011 law change to delay census did not require 75% majority and we expect the same is true here	No Statistics legislation not modernised but link between census and electoral process maintained	Yes No expected barrier to passing a Bill in first half of 2026	No Does not implement Cabinet's decisions in law

Recommendation

- 14 We recommend taking a staged approach, starting with option 2. **9(2)(g)(i)**
 This option also best meets the timeliness, transparency and workability considerations.
- 15 **9(2)(g)(i)**
 How a Bill engages the entrenched provisions is complex and can be open to interpretation. To effectively test whether the Bill engages entrenched provisions, we would consult with the Office of the Clerk on a draft Bill

prior to seeking a Cabinet decision to introduce the Bill. If the Office of the Clerk advises that the amendments engage the entrenched provisions of the Electoral Act, you could:

- determine, before the Bill is introduced, whether you could achieve 75% support of the House at the Committee of the Whole House stage, or,
- remove the conflicting provisions and progress the Bill without them (stepping down to option 3 and then option 4 if necessary).

- 16 At the point of receiving the Office of the Clerk’s advice we would also have a clearer sense as to whether option 3 could progress without engaging entrenched provisions, or whether we can only progress option 4.
- 17 Taking a staged approach is not expected to affect the passage of a Bill deferring the 2028 census, so that it is on track to pass before the 2026 election.

Next steps

- 18 Please indicate your preferred approach to amending the Act. Once we have your direction, we will continue progressing a Bill. If you agree to a staged approach, our intended next steps include working with PCO on the Bill, seeking advice from the Crown Law Office on the Bill’s likely interaction with electoral law, and engagement with Office of the Clerk. These steps will inform your paper for the LEG Committee.
- 19 We will provide you with an updated timeline on 30 July 2025 for seeking Cabinet approval for the introduction of the Bill.

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Appendix 1: Options for addressing the interface between the Data and Statistics Act and the Electoral Act

Option for the Bill	What the Data and Statistics Act would look like	What the Electoral Act would look like	Strengths	Further considerations
OPTION 1 Replace the five-yearly census with an annual census from 2030, and in addition, amend the reserved provisions in the Electoral Act to decouple the census from electoral processes and put in place a new trigger and timing settings	Central legislative feature – an annual census - Censuses are published annually from 2030 - Remove five-yearly data collection, and role of Governor General in appointing when census is taken - Require notification of a reference date that census applies to (by the Government Statistician) - Consequential changes to provisions to reflect annual process (engagement and consultation requirements) and a shift away from full enumeration (requirements for publishing information on internet)	Central legislative feature – an updated trigger for electoral processes - Decouples the ‘census’ from electoral processes - Puts in place a new trigger – for example, a trigger connected to the most recent population statistics rather than the census - Puts in place a new interval if necessary (e.g. every three, four or five years)	A first-principles approach... - Fully implements agreed drafting approach as outlined in MM2970 - Promotes transparency - Provides an opportunity to change electoral law to enable use of the most up to date population data (and potential for aligning with the Independent Electoral Review) while ensuring this works in the Statistics context	...that would take more time - Further policy work on the appropriate trigger and timing (led by the Ministry of Justice), and Cabinet policy approvals, is required - Decoupling the census and electoral processes will require 75% support of the House - It is likely that this Bill could not be introduced until early 2026 and may not pass before the election. This is a significant risk for Stats NZ as the next census is statutorily required in 2028.
OPTION 2 Replace the five-yearly census with an annual census from 2030, and in addition, amend the Electoral Act to (e.g.) redefine census for electoral purposes to be ‘a census taken in every fifth year’	Central legislative feature – an annual census - As for Option 1 - A specific, identifiable, and enduring trigger in the Data and Statistics Act starts electoral processes (currently it is the date set by the Governor General so would need to test whether the proposed notification by the Government Statistician of a reference date would be an adequate substitute for electoral processes)	Central legislative feature – a redefined census to preserve the current legal effect For example, census would be defined in the interpretation section as being a census that occurs, under the Data and Statistics Act, in 2030 and in every fifth year after	A pragmatic approach that achieves your policy goals... - Fully implements agreed drafting approach outlined in MM2970 and intended to transparently continue the current arrangements in practice - Ensures that current frequency of electoral processes does not change, while the Minister of Justice considers advice on electoral settings - A Bill would still be introduced in 2025 and be able to be passed by the election	...but which might involve amending an entrenched provision - We would need to test this approach in a draft Bill with the Office of the Clerk so that it can advise whether it engages entrenched provisions and requires 75% support of the House or a majority vote through a referendum - However, taking this option first does not preclude Options 3 or 4 later
OPTION 3 Retain the five-yearly census, from 2030, and in addition, require the annual publication of statistics about the population and dwellings, and remove provisions in the Act that are predicated on a full enumeration census	Central legislative feature – a five yearly census complemented with annual (non-census) releases - Moves next census to 2030 - Retains requirement for a census every five years - Adds requirement for publication of statistics about the population and dwellings every year - Requires notification of a reference date census applies to (by the Government Statistician) - Removes provisions only required for full enumeration census	Central legislative feature – no change Continues to operate as it does now, with electoral processes triggered by the periodical (current five-yearly) census	A workable trade-off... - Requiring the publication of annual statistics on population and dwellings gives effect to Cabinet expectations - Would need a specific, identifiable, and ongoing trigger to start the electoral processes (currently it is the date set by the Governor General so this would need to be replaced by a notification by the Government Statistician) - No changes to settings requiring engagement with Māori, consultation, and a review – all currently linked to the five yearly census	...but it would affect your previous decisions - Partially affects decisions taken in MM2970 around moving to an annual census - Would need to test this approach in a draft bill with the Office of the Clerk so that it can advise whether it amounts to a workaround - Would need to work through the distinctive nature of five-yearly censuses as compared to the annual releases, to differentiate between them in law, however the Government Statistician has discretion to determine statistics produced and when they are released
OPTION 4 Retain the five yearly census, from 2030, and make no other changes	Central legislative feature – a five yearly census and status quo settings - Moves next census to 2030 - Retains requirement for a census every five years - Retains date set by the Governor General, predicated on full enumeration, as it is the inferred trigger for Electoral Act processes	Central legislative feature – no change As for Option 3	Delivers the minimum viable change... - Least likely to affect reserved provisions (based on 2011 precedent which delayed the census to 2013 after the Canterbury Earthquakes) - Least change, with annual population and dwellings releases implemented operationally by the Government Statistician (not through legislation) - Possibility of amendments to the Data and Statistics Act when the Electoral Act is amended	...but does not deliver Cabinet decisions - Does not deliver on Cabinet decisions endorsing an annual approach to census - Could revisit decisions in MM2970 when the Electoral Act is amended (for example, if Minister of Justice proceeds with broader electoral reform)