

## Is Parliament quietly watering down the independence of the Government Statistician?

*Former Government Statistician, Len Cook raises fundamental questions about the Data and Statistics Bill presented to Parliament by the Minister of Statistics*

Without notice by all but a scarce few, the independence of the Government Statistician and the transparency of government data sharing and use in New Zealand could change after this year. The Minister of Statistics has managed to avoid the public scrutiny of the constitutional implications of this Bill despite transparency in such change being a proper expectation of citizens in a democratic society.

The Data and Statistics Bill presented to Parliament by the Minister of Statistics David Clark waters down the role of the Government Statistician through the simple means of enabling the role to be delegated to unspecified persons or organisations without any further legislative oversight or qualification. That there are serious risks from giving to others the special powers of the Government Statistician is obscured by weak and generally irrelevant arguments given for the Bill by the Minister of Statistics.

In effect, the Data and Statistics Bill uses the role and authority of the Government Statistician to provide an umbrella for extended data sharing across the entire range across of government agencies, and unspecified non-government entities. Longstanding obligations to protect confidentiality appear to have been watered down. The Bill has been presented to Parliament by the Minister of Statistics as a modernising, "future-proofing" change which will improve all aspects of trust. There are improvements needed now in research access and responsiveness to Māori, but these do not require opening up the authority and powers of the Government Statistician in this way.

*Nowhere else in the world have changes of this sort been made in this manner.*

*To do so without a specific consultative process with Māori is surprising, in 2022.*

### ***Data and Statistics Bill – Assumptions not tested***

The arguments for the Bill do not acknowledge that administrative records have limits in their use for informing those policy areas that have been found to be weak. This is because the administrative records of government departments provide data about current policies and practice, from the perspective of government administration. Those countries that have the

most reliance on administrative records for official statistics generally have wide ranging administrative registers for addresses and personal details. Such registers require continued compliance by citizens with registration processes that are rarely seen or accepted in Westminster systems.

The Data and Statistics Bill is to be put in place without the strong legislative oversight and regulation of data sharing and data linkage across government that is in place in other countries, such as the Australian Data Availability and Transparency Act 2022, or the United Kingdom Digital Economy Act 2017.

*The arguments presented by the Minister in speeches are hardly compelling, and I regard their selection as insulting to the public by their frivolousness and generality.*

The arguments of the Minister for the Bill are:

- *“The 1975 Act makes no reference to data at all”.*
- *“It lacks the flexibility to respond to the changes in data and digital that we are seeing.”*
- *“..... but this Act was written before personal computers were widespread, before social media, before the cultural changes that technology continues to drive.”*
- *“It does not provide the kinds of tools we need to boost the supply and quality of administrative data—so, this is data that's collected for other purposes, often: for registrations, service delivery, transactions, recordkeeping.”*
- *“..... it modernises the framework for accessing data and research.”*
- *“..... and supports Stats New Zealand to become a data-first agency, an administrative data-first agency.”*

### ***Data and Statistics Bill – Constitutional implications not transparent***

It is the independence of the Government Statistician in the guardianship of confidential information provided to government only for statistical use that underpins trust in official statistics. Official statistics bring confidence in how we measure progress or lack of on economic, environmental and social concerns, reporting regardless of the political predisposition of Ministers of the day. Citizens, business, international organisations and ratings agencies are all stakeholders who depend on this trust.

*In providing others with the powers of the Government Statistician, as statistical clones, concerns of the public legitimacy of statistical functions critical to trust in government may reduce the trust we have in the role.*

After enactment, the Data and Statistics Bill will bring the Government Statistician into the fold of the policy, enforcement and operational agencies of government through permitting data sharing on an unknown scale. This would make unavoidable a reversal in the long-standing constitutional checks on involvement by the Government Statistician in policy advocacy or justifying the operational delivery of policies. They are briefly referred to in the report of the Select Committee.

The Data and Statistics Bill permits the delegation to other persons and agencies of the powers that have been unique to Statistics New Zealand and the Government Statistician for some 110 years. Bodies that could receive such a delegation exist because of purposes that must at some time conflict with the statistician's impartiality, protection of confidentiality and privacy whenever their role involves policy, service

*No policy, service or compliance organisation that I am aware of has maintained without question a consistent reputation for being responsible, transparent, and scientific for as long as the Government Statistician (or Auditor-General) has.*

delivery, advocacy, enforcement or surveillance. It is near impossible for any organisation with other functions to either meet or be perceived to meet obligations of impartiality.

### ***Data and Statistics Bill – Propagating clones of the Government Statistician***

Establish a legislative authority for propagating clones that could publish trustworthy statistics with the duty of care required of the Government Statistician would necessitate expertise that is not an essential requirement or condition of appointment to other positions, and which would be rarely met. The Data and Statistics Bill will also water down the obligations on the Government Statistician to guarantee to protect the confidentiality of statistical responses, a reduced duty of care about which the Minister has not yet drawn attention to.

The Bill risks weakening public trust more generally by ignoring the separation of roles of agencies involved in service delivery, enforcement or statistics. This establishes the opportunity for agencies to obtain confidential personal information beyond that needed for the functioning of their statutory roles.

Only last week the Prime Minister wisely commented about trust in government being *“something that can be built up over decades but torn down in mere years.”* The Minister of

Statistics might take heed of his own leader. Over many decades, it is my now dead predecessors who had responsibility for building the trust in the Government Statistician that we have all long become accustomed to. I would expect them to be turning in their graves when this Bill is enacted.

**Contributed by Len Cook, former NZ Government Statistician and UK National Statistician**

Len Cook was Government Statistician of New Zealand from 1992 to 2000. He was the National Statistician of the United Kingdom and Registrar-General of England and Wales from 2000-2005. He remains active in the use and analysis of official statistics.

- Vice President of the International Statistics Institute (2005-2009) and life member of the NZ Statistical Association, the Institute of Public Administration, and Companion of the Royal Society.
- Participation in the official statistical systems of the European Union and the Pacific region.
- Experience in policy applications of statistics spanned the Task Force on Tax Reform (1981), Royal Commission on Social Policy (1987-88), through to Superu Board Chair and Families Commissioner (2015-2018).

Tabular Appendices

<p><b>Clause 17 of the Data and Statistics Bill enables the Government Statistician to delegate all functions and powers to unspecified persons or agencies, without qualification or constraint</b></p> <p><b>17 Delegation of functions or powers of Statistician</b>  (1) The Statistician may delegate in accordance with clauses 2 to 4 of Schedule 6 of the Public Service Act 2020 any of the Statistician’s functions or powers under this Act or any other Act (including functions or powers delegated to the Statistician under this Act or any other Act), except that—</p> <p style="padding-left: 40px;">(a) the delegation of functions or powers delegated to the Statistician by a Minister requires the prior written approval of that Minister; and</p> <p style="padding-left: 40px;">(b) the delegation of functions or powers delegated to the Statistician by the Public Service Commissioner requires the prior written approval of the Public Service Commissioner.</p> <p>(2) However, the Statistician must not delegate to a person outside the public service (as described in clause 2(5) of Schedule 6 of the Public Service Act 2020) any of the following:</p> <p style="padding-left: 40px;">(a) the power to issue a compliance notice under section 61:</p> <p style="padding-left: 40px;">(b) the power to issue an infringement notice under section 70.</p> <p>(3) Clauses 2 to 4 of Schedule 6 of the Public Service Act 2020 apply to delegations under this section as if those delegations were made under clause 2 of that schedule.</p>	<p><b>Select Committee Response</b></p> <p>“We consider that the Statistician would be highly motivated to take care when considering possible delegations. This is because the Statistician would be responsible for any actions taken by a person acting under delegation.”</p> <p>“We do, however, recommend amending clause 17 to insert a requirement for the Statistician to publish information about relevant delegation including their process in making the decision. We believe this would provide more transparency and accountability for the delegation of the Statistician’s functions and powers.”</p>	<p><b>Risk to Independence of the Government Statistician</b></p> <p>a) The Government Statistician must guarantee a duty of care of the highest professional standard with respect to impartiality, methods and standards and protection of confidentiality, consistent with national and international obligations for the integrity of official statistics.</p> <p>b) The role of Government Statistician has existed for some 110 years. Alongside the Auditor-General it is well recognised and trusted as an independent overseer of executive government in the breadth, comprehensiveness and reliability of its reporting on economic, social and environmental conditions in New Zealand.</p> <p>c) No other country is known to have experimented with delegation in this way, nor does it exist in NZ in less critical roles.</p> <p><b>d) The Statistics Act 1975(Sect 17 (4) specifies to whom the Government Statistician can delegate their powers to, which is limited to a duly appointed Deputy Government Statistician.</b></p> <p>e) Unlike all other public service appointments, the Government Statistician has been appointed independent of Ministers since 1988, by the Public Services Commissioner alone, (now required by the Public Service Act 2020).</p>	<p><b>Alternative responses by Parliament</b></p> <ul style="list-style-type: none"> <li>● Delete clauses 17 (1), (2), (3); or</li> <li>● Refer the Data and Statistics Bill to the Law Commission for review; or</li> <li>● Refer the Data and Statistics Bill to the Justice Select Committee to assess constitutional implications.</li> </ul>
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<p><b>Clause 24 (6) and 39 (1) of the Data and Statistics Bill do not specify the obligations on the Statistician to protect confidentiality as strongly as the 1975 Act does.</b></p> <p>The key phrase in the Data and Statistics Bill is “<i>may disclose the data only in a form that could not reasonably be expected to identify any individual or organisation.</i>” This specification removes the clarity of intention in the Statistics Act 1975, which states 1975 Statistics Act Clause 37 (4) “<i>All statistical information published by the Statistician shall be arranged in such a manner as to prevent any particulars from being identifiable by any person</i>”, or 4(b) “<i>their publication in that manner could not reasonably have been foreseen by the Statistician or any employee of the department.</i>” Clause 51 is similarly weak.</p>	<p><b>Select Committee Response</b></p> <p>Not considered</p>	<p><b>Risk to Independence of the Government Statistician</b></p> <p>The determination of “Reasonably be expected to identify” is liable to subjective interpretation, and less able to be subject to effective scrutiny.</p>	<p><b>Alternative responses by Parliament</b></p> <p>Retain the form in the Statistics Act 1975 Clause 37 (4)</p>
<p><b>Additional clause to provide and promote standards for classifications</b></p> <p>Strengthen the obligation on the Government Statistician [Clause 90] to provide and promote standards for classifications, definitions and statistical frameworks as well as the wider availability of metadata relevant to all statistical sources and official statistics.</p>	<p><b>Select Committee Response</b></p> <p>Not Considered</p>	<p><b>Risk to Independence of the Government Statistician</b></p> <p>Critical to reliability of international comparisons and integrated statistics including National Accounts, demographic and environmental statistics</p>	<p><b>Alternative responses by Parliament</b></p> <p>Retain clause of Statistics Act 1975 14 (i) [to lay down, and promote standard concepts, procedures, definitions, and classifications for use in official statistics]</p>

## References

1. Data and Statistics Bill: [www.legislation.govt.nz/bill/government/2021/0081/latest/LMS418574.html](http://www.legislation.govt.nz/bill/government/2021/0081/latest/LMS418574.html)
2. Len Cook Submission to Select Committee 23/12/2021: [www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCGA\\_EVI\\_116197\\_GA20875/leonard-cook](http://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCGA_EVI_116197_GA20875/leonard-cook)
3. Len Cook Submission to Select Committee 23/12/2021: [www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCGA\\_EVI\\_116197\\_GA21244/leonard-cook-supp-2](http://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCGA_EVI_116197_GA21244/leonard-cook-supp-2)

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