

# Submission on the Review of the *Statistics Act 1975*

## *Te Mana Raraunga (Māori Data Sovereignty Network)*

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### Introduction and context

1. Te Mana Raraunga, the Māori Data Sovereignty Network<sup>1</sup>, brings together over 100 Māori researchers, practitioners and entrepreneurs from a range of sectors. Te Mana Raraunga advocates for the realisation of Māori rights and interests in data, for data to be used in safe and ethical ways to enhance the wellbeing of Māori people, language and culture, and for Māori governance over Māori data.<sup>2</sup> Māori data “refers to digital or digitisable information or knowledge that is about or from Māori people, our language, culture, resources or environments”.<sup>2</sup>
2. Te Mana Raraunga has articulated principles of Māori Data Sovereignty that guide our approach to the collection, management, and use of data.<sup>2</sup> Specifically, these principles are: Rangatiratanga (Authority); Whakapapa (Relationships); Whanaungatanga (Obligations); Kotahitanga (Collective benefit); Manaakitanga (Reciprocity); and, Kaitiakitanga (Guardianship).
3. We welcome the opportunity to contribute to the review of the *Statistics Act 1975*. We see a critical need for embedded Māori governance of Māori data across the Official Statistics System (OSS). Robust, relevant, high-quality data are an important resource for Māori. Confidence and trust in the OSS depends on meaningful Māori involvement (at governance and decision-making levels) in how our data are collected, managed and used.
4. The *Statistics Act 1975* is a key part of the legislative framework guiding the OSS in Aotearoa New Zealand. As such, Te Mana Raraunga have a significant interest in ensuring that the current Review of the *Statistics Act 1975* supports Māori data rights and interests, strengthens rights related to Te Tiriti o Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples, and promotes Māori data governance and the realisation of Māori aspirations.
5. The environment within which data are generated, collected, stored, and used in Aotearoa New Zealand has changed significantly since the original Act. These changes include rapid growth in the availability of datasets electronically, increased offshore storage of data, greater data-sharing between agencies and organisations, moves towards a more ‘open’ data environment, and increased linkage of datasets with each other. Statistics New Zealand has been involved in many of these changes in the New Zealand context, including in relation to data linkage via their role in maintaining the Integrated Data Infrastructure (IDI).

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<sup>1</sup> [www.temanararaunga.maori.nz](http://www.temanararaunga.maori.nz)

<sup>2</sup> *Principles of Māori Data Sovereignty*, available on [www.temanararaunga.maori.nz](http://www.temanararaunga.maori.nz)

6. Alongside the shifting official statistics environment, a range of concerns relating to data rights and data justice issues, privacy, and informed consent have been raised by various individuals and communities. In particular, Māori and other Indigenous peoples have been re-articulating our sovereignty in relation to data, and reaffirming rights under the United Nations Declaration on the Rights of Indigenous Peoples, and other international and nation-based treaties and conventions.
7. Our submission is organised into two main sections. In Section 1, we outline key points in relation to the Review and any new data and statistics legislation, organised around TMR's Principles of Māori Data Sovereignty. In Section 2, provide comment on selected specific questions asked by Statistics New Zealand in the Discussion Document for this review (Statistics NZ 2018), focusing on those questions of most direct relevance to Te Mana Raraunga.

## **Principles of Māori Data Sovereignty and the Review of the *Statistics Act 1975***

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### **Section One**

#### **Rangatiratanga | Authority**

8. Any new data and statistics legislation must explicitly recognise Māori rights and interests, including Māori rights to govern Māori data collected as part of the Official Statistical System.
9. Any new data and statistics legislation must explicitly recognise and embed Crown obligations in relation to Te Tiriti o Waitangi. In addition, government obligations under other international conventions and declarations (such as the United Nations Declaration on the Rights of Indigenous Peoples) should be recognised.
10. The Review should consider how to increase the availability of official statistical datasets that are relevant for iwi in any new legislation. This should include access to aggregated datasets for iwi and iwi-related groups (with appropriate governance, balances, safeguards and privacy protections for individuals) that can be used by iwi and related groups to understand the state of our collectives, and, potentially to facilitate connecting with our people.
11. The Review should work with Māori to identify key variables of importance and relevance for Māori. The consistent, timely and appropriate collection of these variables (which may include ethnicity, Māori descent and iwi) should be incorporated into any new legislation, and provisions made to ensure these data are of highest practicable quality and are available to Māori communities, iwi and iwi-related groups consistently and in a timely manner.
12. The independence of the Government Statistician should be maintained in any new legislation. The role of the Government Statistician should be supported by a clear co-governance arrangement with Māori.

### **Whakapapa | Relationships**

13. Māori data should be collected and coded in ways that support Māori priorities and aspirations, and that facilitate disaggregation to meet the data needs of Māori communities, iwi and iwi-based collectives.
14. Any new legislation needs to consider the potential future impacts and uses of data in official statistical systems and ensure strong Māori governance to identify and pre-empt potential future harm. This should include recognition of data governance requirements for any data that is identifiable to a particular iwi or Māori collective.

### **Whanaungatanga | Obligations**

15. Legislation needs to recognise both individual and collective rights in relation to data and make sure that individual and collective rights are balanced.
16. The Review should consider how accountabilities to the communities, individuals and groups from whom Māori data derive are incorporated into legislation and into the functioning of the broader OSS. This should include regular reporting back to Māori on how these obligations are being met by government agencies.

### **Kotahitanga | Collective benefits**

17. The Review and any resulting legislation must ensure an official statistical system that provides real meaningful benefits for Māori, both at individual and collective levels.

### **Manaakitanga | Reciprocity**

18. Free, prior and informed consent should be the underpinning principle and preferred approach to the collection and use of data for official statistics. Where such consent is not present, there needs to be strong governance and ethical provisions in place, including Māori ethical frameworks and practices.
19. Strong Māori governance should be embedded into the official statistical system to support collection and use of data in ways that uphold the dignity of Māori and minimise use of data in ways that are stigmatising and harmful to Māori collectives and/or individuals.

### **Kaitiakitanga | Guardianship**

20. Any new legislation should maintain the privacy and confidentiality of data by not permitting re-identification of individuals from official government data without their prior consent, in line with the Privacy Act.
21. Māori should have control over deciding the protocols and policies around Māori data, including where access to Māori data should be restricted and/or open. This will include control over access and publication of any data that is identifiable to a particular iwi or Māori collective.



## Comments on specific questions in the Review Discussion Document

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### Section Two

22. This section provides responses to specific questions asked by Statistics New Zealand in its Discussion Document to support the Review, focusing on questions of particular relevance or interest for Te Mana Raraunga.

**Discussion Document question:** *Do you think these proposed outcomes are the right ones for new data and statistics legislation? Please comment on any of these outcomes, and/or list any other outcomes you think should be considered.*

23. In line with the principle of Rangatiratanga, we strongly support the statement in the Discussion Document that “Iwi and Māori rights and interests are actively protected when collecting, managing, and using data”. These rights and interests include the right to Māori governance over Māori data, to relevant information, to self-determination, and the right to free, prior and informed consent as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.
24. The outcomes in the Discussion Document do not refer to consent specifically, but rather to “Privacy, confidentiality, and transparency”. While these are important principles, we assert that consent as a principle (in relation to both individual and collective consent), needs to also be considered and incorporated in new data and statistics legislation.
25. We support the importance of safety, responsibility, and ethical practice in the collection, management, and use of government-held data and official statistics. Māori ethical frameworks and Māori governance are important mechanisms for ensuring safety, responsibility and ethical practice over Māori data.
25. We understand that there is a balance between increasing access to, and use of, government-held data and upholding the rights of individuals and collectives whose data it is. In considering this balance, new legislation needs to take into account the power relationships and potential power imbalances between government agencies collecting the data and individuals and communities providing the data. New legislation also needs to consider the increasing use of data alongside government obligations under Te Tiriti o Waitangi, UNDRIP and other international human rights instruments.
26. We would suggest that in addition to “improving the lives of all New Zealanders”, any outcomes in new legislation need to also assess how government-held data are used to reduce or eliminate inequities, and monitor whether the use, management and collection of data are contributing to disparities or inequities.

**Discussion document question:** *How do you think the Treaty of Waitangi should be recognised across the government data system?*

27. Formal, meaningful recognition of Te Tiriti o Waitangi in official statistical systems aligns with Te Mana Raraunga’s principles of rangatiratanga in relation to data. Te Tiriti o Waitangi should be recognised across the government data system, and explicitly embedded into new legislation. We suggest that specific clauses articulating government obligations in relation to Te Tiriti o Waitangi be incorporated into new legislation.
28. We recommend that the incorporation of Te Tiriti o Waitangi into new legislation should include reference to the provisions (i.e. the articles of Te Tiriti) rather than only to the principles.
29. Te Tiriti o Waitangi should also guide relationships with Māori (as individuals, collectives and Iwi). That is, Māori should be understood as Treaty partners, as opposed to a consumer or client group. This partnership should be reflected in structures, decision-making and governance arrangements. Consideration should be given to having a Chief Māori Data Steward role.
30. We suggest the following as potential wording in new legislation (adapted from Te Ture Whenua Māori Act):

Te Tiriti o Waitangi established the special relationship between Māori and the Crown. The revised Statistics Act should reaffirm the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Te Tiriti. Data are a taonga of special significance to Māori and, for that reason, the Act should promote Māori decision-making in regards to the collection, storage and application of Māori data, and enable whānau, hapū and iwi to access data that are from or about them and their relationships with their environments in order to facilitate and promote their own advancement. The Act should establish mechanisms to assist Māori people to achieve the implementation of these (or Māori data sovereignty) principles.

Where significant decisions are made in relation to Māori data, the Crown must involve Māori Treaty partners in those decisions.

All iwi have the inherent right, from Te Tiriti, to exercise kaitiakitanga and rangatiratanga over data from them or about them.

**Discussion document question:** *How do you think iwi and Māori interests in collecting, managing, and using data should be recognised?*

31. The Review of the Statistics Act should recognise that Māori have the right to govern Māori data collected as part of official statistics, and should consider how the right of Māori governance over Māori data in official statistics can be affirmed and supported and how responsiveness and obligations to iwi and Māori communities can be strengthened in new legislation.
32. All responsible government agencies need to work closely and collaboratively with Māori to ensure that Māori rights and interests in this space are realised. This should include embedded accountability mechanisms, such as regular reporting by all government agencies on the adequacy of their measures and statistics for Māori, as well as periodic reporting by an independent group/s on changes over the past period, and the relevance and adequacy of plans for the next five years.
33. Data that are of key importance to Māori should be collected, including ethnicity data, Māori descent, and iwi. Currently, Māori descent is not included in the 'list of particulars' of variables that must be collected in the census. Māori descent should be mandatory to be collected as part of the census. Consideration should also be given to making iwi data a mandatory question on the census.
34. Māori descent information should continue to be collected on birth and death registrations, to provide an alternative official statistical source of these data, as well as a source of this information for any person born in between Censuses

**Discussion Document questions:** *Do you agree or disagree with the proposed functions, duties, and powers of the Government Statistician listed above? Please comment. Do you think there are any other functions, duties, or powers for leading and coordinating the Official Statistics System the Government Statistician needs to have?*

35. As outlined previously, we strongly support the maintenance of the independence of the Government Statistician role in any new legislation. The Government Statistician also needs to have strong, co-governance relationships with Māori as Treaty partners. This should include the potential role of a Māori Data Steward.

**Discussion Document question:** *What are your suggestions for ensuring transparency, trust, and integrity in the production of official statistics across government?*

36. Clear, meaningful Māori governance over Māori data in the official statistical system can support trust in government data systems.
37. Trust, transparency and integrity can also be supported by requiring clear information about the provenance of data, how it has been collected, coded, stored and used (in line with the TMR

Whakapapa principle). This includes making explicit the algorithms and any software code/processes used to manage or analyse any official statistical data.

38. Individual and collective consent is important to maintaining trust and transparency in data systems. The process of obtaining free, prior informed consent supports greater transparency about why data are collected and how they will be used.
39. New legislation should consider government obligations and accountabilities where harm results from the (mis)use of government-held data (in line with the principles of Whanaungatanga, Kotahitanga and Manaakitanga). The Review should consider mechanisms for monitoring and recording data harm, such as mandatory reporting of data breaches.

**Discussion Document question:** *Do you think there should be an opportunity for public input when deciding on New Zealand's most important statistics? Please explain.*

40. There should be accessible processes and opportunities for individuals and communities to have input into decision-making about important statistics. Specifically, there should be embedded, consistent processes for ensuring Māori input into decision-making about official statistics. These processes need to recognise Māori rights under Te Tiriti o Waitangi and UNDRIP, rather than positioning Māori as a customer or client group.

**Discussion Document question:** *What do you think about the Government Statistician being able to choose the best data source (administrative data or survey data) and require the data to be provided?*

41. Insofar as this involves Māori data, this should require the agreement of Māori as Treaty partners (vis-à-vis a governance group), and should involve informed consent as far as practicable.
42. The Review should weigh up the potential risk that a provision for the Government Statistician to require data to be provided may impact adversely on data collections themselves, in a way that could undermine the integrity of the data by influencing how people respond.
43. There is also the potential that if it is known that the Government Statistician can require any administrative or survey datasets to be provided to them, this could undermine trust in the broader official statistical system and/or willingness to provide data more generally.

**Discussion Document question:** *Do you have any suggestions about what the Government Statistician should consider when deciding the best data source needed to produce official statistics?*

44. There need to be checks and balances in place when the Government Statistician is considering the best data source to produce official statistics. This includes an understanding and



consideration of the context of data collections (e.g. where the data collected under coercive or non-voluntary circumstances? Are the data self-reported or provided by third parties?).

45. The principle of consent should apply in decisions about use of other data sources, as well as consideration of the balancing of government data priorities with Māori data rights.

**Discussion document question:** *Do you think public consultation should be required before decisions are made on new or altered content for the Census? Please give reasons.*

46. It is important that individuals and communities are included in processes for decision-making about the content of key datasets, such as the Census. Consideration should be given to making engagement with communities more accessible and to having processes to ensure that groups that are more likely to be impacted by changes to content are prioritised in any decision-making.
47. Māori input into decision-making should be at a governance level, as well as having the opportunity for other forms of engagement, such as consultation.

**Discussion Document question:** *What things do you think are important when deciding to make data open?*

48. Any decisions about making Māori data open should involve Māori as active decision-makers. In particular, Māori should decide which Māori data are to be open and which restricted (in line with the principle of Kaitiakitanga).

**Discussion Document questions:** *Do you agree or disagree that new data and statistics legislation should clarify that data can be shared across government so that it can be used for research and analysis, with appropriate safeguards and protections? Please give reasons why or why not. What protections and safeguards do you think should apply when organisations outside government want to combine their data with government data for research and analysis?*

49. The central principle here is that Māori data should be subject to Māori governance. Therefore, all decisions over the sharing of Māori data, with whom, and how, need to have Māori governance and align with the Te Mana Raraunga Māori Data Sovereignty principles.
50. There need to be strong protections and safeguards in place in linking data with government data for any purposes. These protections need to include consideration of the disparate impacts on communities who are represented differentially in datasets, or who may be more identifiable as they represent smaller proportions of the population.
51. The Review, and any new legislation, needs to explicitly examine the potential risks of re-identification through data linkage, and include mechanisms to protect individuals and communities.

**Discussion Document question:** *Do you agree, or disagree, that new data and statistics legislation should clarify the public interest test considerations for access to government-held data for research and analysis? Please give reasons for your answer.*

52. The public interest test considerations also need to be balanced against the rights and interests of Māori, as Treaty partners and as Indigenous peoples. This balancing will be supported by the embedding of Te Tiriti into new legislation, and by having Māori governance and decision-making across the whole official statistical system.
53. The public interest test needs to be clarified in terms of the public good of both the purpose of the research and the process of the research. To be in the public good, any use of official statistical resources needs to be conceptually valid and scientifically robust. Transparency of the research process, including availability of the algorithms, programming or processes used for data management or analysis is essential to validation of research quality. Requiring such transparency by default would not only follow accepted scientific practice, but also result in a resource that could assist in improving the quality, accessibility and applicability of official statistics.

**Discussion Document questions:** *Data sensitivity, likelihood of harm, and public expectations are three possible factors to consider when assessing the benefits and risks of research or analysis using government-held data. What other factors do you think should be considered and why?*

*Do you agree or disagree with introducing a risk-management approach to confidentiality settings, balancing benefits against the likelihood and potential impact of identification? Please give reasons why or why not.*

*Apart from sensitivity of data, what factors do you think should be considered when assessing the potential harm from releasing less-confidentialised data?*

54. Where research or analysis involves Māori data, there needs to be Māori governance. In assessing risks and benefits, the level of free, prior and informed consent of the data in datasets also needs to be considered.
55. The Review and any new legislation needs to have a broader understand of ‘harm’ in the context of data. Current provisions focus on technical safety. There also needs to be a focus on the harm that results from the use or interpretation of Māori data in ways that perpetuate stigmatising, and deficit-framings of Māori.
56. In terms of confidentiality and risk of identification, this needs to be understood both in relation to risks to individuals, but also risks to collectives (e.g. whānau, hapū, iwi).

**Discussion Document questions:** *What do you think are the issues, if any, of allowing access to data by international researchers? How might these be addressed?*

*What do you think are the issues, if any, of approving data labs outside of New Zealand? How might these be addressed?*

*What do you think are the issues, if any, of providing data to reputable international organisations for their ongoing use? How might these be addressed?*

57. There are potential jurisdictional issues with allowing access to international researchers and organisations or approving overseas datalabs. In line with TMR principles of data sovereignty, the principle of Rangatiratanga (authority) is best served by local (onshore) management, storage, and control of Māori data. TMR does not support international access to Māori data that are part of government-held datasets in the official statistical system.

**Discussion Document questions:** *What information about access to government-held data for research and analysis do you think should be made publicly available? Please give reasons.*

*Are there other aspects of data collection, management, and use that you think government agencies should be more transparent about? Please give reasons.*

58. All government agencies should be transparent about the potential for data to be shared with other agencies and/or linked to other datasets. Currently, much of this is happening without explicit information being provided to those people whose data it is at the point of collection. Government agencies should be clear, up-front and proactive in communicating the actual and potential additional and future uses of data at the point of collection, the potential benefits and any risks involved.
59. Where data linkage and/or sharing has occurred, government agencies should be able to provide individuals and communities with clear information about this.
60. Government agencies should provide greater transparency about where data are stored (e.g. locally, internationally).

**Discussion Document question:** *Apart from the two existing broad obligations – to provide information to produce official statistics, and to protect confidentiality of information – are there any other obligations you think should be able to be enforced?*

61. New legislation should consider obligations around mandatory reporting of data breaches.

**Discussion Document question:** *Do you think the two broad types of obligations should be treated with the same level of seriousness? In other words, is failing to provide information as serious as failing to protect confidential information?*

62. The relative difference in power between the Government Statistician, government agencies and the general public should be reflected in the way in which these obligations are understood.

The Government Statistician has significant powers under legislation, and these should be balanced against the seriousness with which breaches or failures to protect data are accounted for. Failure to provide information is not considered the same level of seriousness as failure to protect the data the government has responsibility over.