DISCUSSION DOCUMENT

Safer Online Services and Media Platforms

June 2023

Te Tari Taiwhenua
Internal Affairs

Te Kāwanatanga o Aotearoa
New Zealand Government

Contents

Snapshot of the proposals

What's the problem with the current system?

Everyone consumes or uses content, like books, films, and radio to social media, blogs, and everything in between. However, our rapidly evolving and growing environment means that New Zealand's existing regulatory systems for content are no longer as responsive or effective as we would like them to be. Because of this, New Zealanders are being exposed to harmful content and its wider impacts more than ever before.

This discussion document suggests a solution that introduces more robust consumer protection measures that protects New Zealanders while maintaining the existing freedoms we enjoy.

It is important that we act now. If we do nothing, New Zealand is at risk of falling behind the protections that other like-minded nations are providing. The proposals in this paper are aligned to the changes being made in other countries to better protect their citizens and their human rights.

Unsafe content takes many shapes and forms, and has the potential to harm individuals, communities, and New Zealand society

In a June 2022 research report from the Classification Office, 83% of respondents reported being concerned about harmful or inappropriate content on social media, video-sharing sites, or other websites (Te Mana Whakaatu Classification Office, What We're Watching: New Zealanders' views about what we see on screen and online, 2022).

Child protection and consumer safety is not as effective as it should be

During our community engagement, we heard widespread concerns about the harm some content is causing children and young people. Many of these concerns were about social media and other online platforms, but we also heard concerns about other types of platforms such as broadcasters. This risky content includes age-inappropriate material, bullying and harassment, and promotion of self-harming behaviours. Instances of harmful content on mainstream social media sites, such as influencers promoting dangerous disordered eating to teenage girls, have become too common. Internet NZ's 2022 Internet Insights report also found that respondents were most concerned about the internet enabling young children to access inappropriate content (Internet NZ, New Zealand's Internet Insights 2022).

There have been well-documented cases where young people have been seriously harmed by distressing material that has been actively recommended to them by platforms. (In this discussion document we use the word 'platforms' to refer to providers of content and services – for example, social media companies or broadcasters.)

Consumer safety protections on media and online platforms are not as strong as they are for many other services that New Zealanders use, and they are not consistent across all platforms. Most platforms set standards for the content they will carry, but the standards do not always reflect the expectations of the society they are operating in. These standards are also not always met. It can be very hard to resolve a complaint when a platform does not deliver on its commitments to its users.

Behaviour that is illegal is sometimes tolerated online

Our current system has legal powers to deal with the most awful and illegal content like child sexual exploitation and promotion of terrorism, regardless of whether it is delivered online or through traditional forms of media such as printed publications. But sometimes content that includes other illegal actions (such as threatening to injure) can be taken less seriously or even amplified online.

Our current legislation is outdated and doesn't protect consumers as it should

Our main pieces of legislation are over 30 years old: the Films, Videos and Publications (Classification Act) 1993 and the Broadcasting Act 1989. Many parts of those laws are still relevant, for example codes of broadcasting practice and tools to protect children from age-inappropriate content on television. But they do not have the reach and tools to deal with the online world.

The current system is difficult to navigate and has big gaps. New Zealanders must figure out which of five industry complaint bodies to go to if they feel content is unsafe or breaches the conditions of the platform it is on. On top of that, not all forms of content are covered by those bodies. The system is also very reactive because it relies mainly on complaints about individual pieces of content. For most forms of content, we do not have the tools and powers to ensure that platforms are doing what they should to manage the risks of harmful content.

It is important that our laws reflect our digitalised environment, including clear avenues where consumers can influence the content they see and respond to content they feel is harmful. While the development of this legislation rests with government, the implementation and practice sit with platforms. These safety practices need clear oversight to ensure effective and appropriate implementation.

Who currently deals with harmful content?

We've illustrated below the main players in the current system with responsibilities for dealing with harmful content. There are many agencies involved in managing the same area. Some areas are not consistently regulated at all, for example, social media and other online platforms are not required under New Zealand law to meet safety standards on their services. Other parts of the wider media industry rely on voluntary compliance, such as the New Zealand Media Council and Netsafe's Code of Practice for Online Safety and Harms.

The following organisations have responsibilities for safety across the media and digital environment	Online harms are also managed under other systems, such as:
Te Tari Taiwhenua Internal Affairs Te Mana Whakaatu Classification Office New Zealand Police Ngā Pirihimana o Aotearoa NZTech BSA Broadcasting Standards Authority Te Mana Whanonga Kaipāho Film & Video Labelling Body NZMC New Zealand Media Council netsafe New Zealand Customs Service Te Mana Ārai o Aotearoa ASA Advertising Standards Authority	Harmful Digital Communications Act 2015 Unsolicited Electronic Messaging Act 2007 (spam) Cyber-security and cyber-crime Commerce (scams) and intellectual property Privacy

We think that our proposed approach, outlined overpage, would address the existing gaps and issues with the current system.

We are proposing a new way to regulate social media and traditional media platforms

We think it makes sense to focus on platforms that pose the biggest risk, and ensure regulatory responses are proportionate

We're proposing a new approach to regulating online platforms and other forms of media, like news, in New Zealand. Under the proposals, online and other media platforms would be brought into one cohesive framework with consistent safety standards. We want to make sure that platforms are safe for users, but we don't want to over-regulate them. We'll do this by creating **codes of practice** that set out specific safety obligations for larger or riskier platforms. These codes will be enforceable and approved by an independent regulator. The codes will cover things like how platforms should respond to complaints and what information they should provide to users.

What is a code?

When we talk about a code, or code of practice, we mean a set of standards or requirements that platforms would have to meet to be responsible providers of access to digital and traditional media content.

Regulatory efforts will focus on the areas of highest risk, such as harm to children or content that promotes terrorism. Some platforms, like social media and video-sharing services, will need to make changes to their services because they're not currently regulated in New Zealand. We also believe that education and awareness-raising are important, so further investment in programmes would be needed to help people decide what content is safe for them and understand the risks of using and sharing online content. We believe this approach will create a safer online environment without being unnecessarily difficult for platforms.

A new industry regulator that is independent from government would provide a clear 'home' for consumer safety on online and media platforms

We are proposing a new independent regulator, separate from the government, to promote safety on online and media platforms. This new regulator would work with platforms to create a safer environment and would require larger or high-risk platforms to comply with codes of practice. The codes would set out the standards and processes platforms need to manage risks to consumer safety, such as protecting children and dealing with illegal material.

Platforms will need to have operating policies in place to meet these requirements but will have flexibility to decide how to achieve them. Industry groups will develop the codes with input from and approval by the regulator. This approach leaves editorial decision-making in the hands of platforms while ensuring users have greater transparency and protection.

Platforms would be supported by the new regulator to be compliant

The existing system has processes in place to ensure that broadcasters like TV and radio, and other traditional media comply with existing codes. These are a mixture of government and industry-led regulations. Social media does not have similar compliance requirements in New Zealand.

The new regulator would make sure social media platforms follow codes to keep people safe. Media services like TV and radio broadcasters would also need to follow new codes tailored to their industry. The regulator would have the power to check information from platforms to make sure they follow the codes and could issue penalties for serious failures of compliance. This would ensure everyone is playing by the same rules and that consumer safety is prioritised. There will probably be some deliberate non-compliance by smaller players, but we expect the biggest platforms to participate willingly – including the biggest social media companies.

The proposals reflect those of comparable countries which makes it easier for a regulator to enforce and for platforms to follow the rules. The discussion document also asks for your opinion on whether more measures are needed to make sure everyone follows the rules.

We’re not proposing to change definitions of what is legal or illegal

We are not proposing any changes to definitions of what is considered illegal in New Zealand. The system would retain powers of censorship for the most extreme types of content (called ‘objectionable’ material). This material is already illegal, and it will remain illegal to produce, publish, possess and share. Criminal and civil penalties would still apply, and prosecutions could continue to be undertaken by government agencies such as Police, Customs, or Internal Affairs.

The regulator would also have powers to require illegal material to be removed quickly from public availability in New Zealand. These powers exist already for objectionable material. We are proposing that the regulator should also have powers to deal with material that is illegal for other reasons, such as harassment or threats to kill. We seek your feedback on what other kinds of illegal material the regulator should have powers to deal with. The regulator would have no powers to moderate or require takedown of legal content.

Many New Zealanders won't notice much of a change from the status quo, especially if they don't currently experience harm from the content they are exposed to. What will be different is that a new regulator will be taking a more proactive and consistent approach to consumer protection, especially for children.

As a result, New Zealanders will have a better online experience. Unintentional exposure to the most harmful content on online platforms should be far less common. New Zealanders will be provided with more relevant information on risks, keeping them better informed about the content they choose to consume. It will be easier for New Zealand consumers to get help or make a complaint, when this becomes necessary.

The objective and outcomes of a new regulatory framework

The objective of this review of New Zealand's regulatory system for media and online platforms (the Review) is to enhance protection for New Zealanders by reducing their exposure to harmful content, regardless of delivery method. The aim is to provide better protection for vulnerable groups and achieve better consumer protection for all New Zealanders.

To accomplish this objective, the system must incorporate safety measures into platforms' management systems and processes. Transparency and proportionality are critical, and decisions must align with New Zealand's democratic values and human rights.

The government's role should be limited to dealing with illegal material and a regulator will take a more proactive approach to consumer protection.

The proposals will not expand the scope of what is considered illegal material, and the emphasis on consumer safety supports rights such as freedom from discrimination. The proposals provide a familiar approach and a consistent standard, which should level the playing field for platforms.

How to use this document

We want your feedback on a possible new regulatory framework for safer experiences on online and media platforms. This document explains why we think we need a new framework and what we want it to achieve. You'll also find high-level information about how the framework might be implemented.

This document includes a number of questions that we want the public's feedback on. Your feedback will help shape policy proposals for the Government to consider.

We'll also hold webinars in June 2023 to give people the opportunity to ask us questions about the proposals. This would be helpful for anyone that wants to clarify aspects of the proposals before submitting feedback. Information on how to sign up for these webinars is available on the consultation webpage.

How to provide your feedback

The closing date for feedback is Monday 31 July 2023.

To help you decide what to cover in your submission, there is a list of questions below that focus on different parts of this document. To make it easier, the questions follow the structure of the document.

You do not have to answer all the questions, even though we're interested in your opinion on all the topics we discuss. You also do not need to use our submission form if you would rather structure your feedback differently.

You can provide your feedback by:

Email

sosmp_consultation@dia.govt.nz

Post

Safer Online Services & Media Platforms Consultation
Department of Internal Affairs
PO Box 805
Wellington 6140

Online

Through our online feedback form

How we will use your feedback

Your feedback on the proposals presented in this document will feed into policy proposals for the Government to consider. These policy proposals may include the design of the form and functions of the new regulator, governance, oversight, enforcement powers and monitoring arrangements, as well as appeal and review pathways.

We anticipate that a Bill would be ready in 2024 at the earliest. We will also test final proposals with experts and representatives from community groups, civil society, existing regulators, and platforms.

We will keep all submissions. We may publish the submissions we receive and provide a summary of them on our website, www.dia.govt.nz. This would include your name or the name of your group, but not your contact details.

Submissions may be subject to a request to us under the Official Information Act 1982. We can withhold personal details under this Act, including names and addresses. If you or your group do not want us to release any information contained in your submission, you need to make this clear in the submission and explain why. For example, you might want some information to remain confidential because it is commercially sensitive or personal. We will take your request into account.

The Privacy Act 2020 governs how we collect, hold, use and disclose personal information about submitters and their applications. Submitters have the right to access and correct personal information.

Questions you may wish to consider and respond to

Definitions in the proposals

1. What do you think about the way we have defined unsafe and harmful content? (page 18)
2. Does the way we have defined unsafe and harmful content accurately reflect your concerns and/or experiences relating to harmful content? (page 18)

About our proposed new framework to regulate platforms

3. Have we got the right breakdown of roles and responsibilities between legislation, the regulator and industry? (page 32)
4. Do you agree that government should set high-level safety objectives and minimum expectations that industry must meet through codes of practice? (page 32)
5. Do you agree with how we have defined 'platforms'? Do you think our definition is too narrow, or too broad? If so, why? (page 32)
6. We are trying to focus on platforms with the greatest reach and potential to cause harm. Have we got the criteria for 'Regulated Platforms' right? (page 32)
7. Do you think we have covered all core requirements needed for codes of practice? (page 39)
8. What types of codes and industry groupings do you think should be grouped together? (page 39)
9. Do you think some types of platforms should be looked at more closely, depending on the type of content they have? (page 39)
10. Do you think the proposed code development process would be flexible enough to respond to different types of content and harm in the future? Is there something we're not thinking about? (page 43)
11. What do you think about the different approaches we could take, including the supportive and prescriptive alternatives? (page 43)
12. Do you think that the proposed model of enforcing codes of practice would work? (page 48)

13. Do you think the regulator would have sufficient powers to effectively oversee the framework? Why/why not? (page 48)
14. Do you agree that the regulator's enforcement powers should be limited to civil liability actions? (page 48)
15. How do you think the system should respond to persistent non-compliance? (page 48)
16. What are your views on transferring the current approach of determining illegal material into the new framework? (page 54)
17. Should the regulator have powers to undertake criminal prosecutions? (page 54)
18. Is the regulator the appropriate body to exercise takedown powers? (page 56)
19. Should takedown powers be extended to content that is illegal under other New Zealand laws? If so, how wide should this power be? (page 56)
20. If takedown powers are available for content that is illegal under other New Zealand laws, should an interim takedown be available in advance of a conviction, like an injunction? (page 56)

Potential roles and responsibilities under the proposed framework

21. What do you think about the proposed roles that different players would have in the new framework? (page 63)
22. Have we identified all key actors with responsibilities within the framework? Are there any additional entities that should be included? (page 63)

What would the proposed model achieve?

23. What do you think about how we're proposing to provide for Te Tiriti o Waitangi through this mahi? Can you think of a more effective way of doing so? (page 69)
24. Do you think that our proposals will sufficiently address harms experienced by Māori? (page 69)
25. What do you think about how rights and press freedoms are upheld under the proposed framework? (page 70)
26. Do you think that our proposals sufficiently ensure a flexible approach? Can you think of other ways to balance certainty, consistency and flexibility in the framework? (page 70)

What is the state of our current content and media environment?

For many New Zealanders, our digital and physical lives are closely connected, and the internet is an accepted part of everyday life. Content and media allow people to connect, communicate, entertain, and educate. New Zealand is committed to freedom of expression, so it is important that New Zealanders can continue to create and share content and access platforms and services they value.

The environment that people share and access content or media in is rapidly evolving. Media used to refer to television and radio broadcasters, publishers, advertisers, and cinemas. This type of content or media was created and distributed by a small number of organisations, so it was a lot easier to see what was being created and put rules in place to keep people safe from unsafe content.

What do we mean by content and media?

'Content' means any material, whether it's video, audio, images or text, that is communicated and made publicly available.

'Media' is the form of communication – for example, social media or news media.

Now, in addition to the traditional forms of media, we have access to a diverse range of technologies (such as smartphones) social media, artificial intelligence, virtual reality, and live streaming – to name a few. These technological advancements have lowered barriers to the creation, distribution of, and access to content. As a result, anyone can create and share content. It is estimated that 2.5 quintillion bytes of data are created daily. While this has many benefits, such as an increased diversity of information, it also means there is a greater risk for New Zealanders to experience unsafe content.

The regulatory systems that were designed to respond to traditional types of content and media cannot respond effectively to the modern content types and technologies of today. For example, our existing laws, rules, and processes were enacted just as the internet was starting to be widely used. As a result, there are now gaps and overlaps in how we regulate some kinds of media and content. The main gap is in online platforms like social media, where content is not regulated consistently in New Zealand. While many platforms have their own policies and systems to deal with unsafe content, the consistency of those efforts is not directly overseen by any regulatory authority in New Zealand.

New Zealanders are experiencing a wide range of harms that our existing systems cannot effectively deal with. Unlike traditional broadcasters, like television and radio, online platforms do not have a single agreed code of standards, ethics, and rules. While platforms have their own policies to manage these harms, it is now internationally acknowledged that they need to be brought into formal regulatory systems to reduce the risk of harm.

Comparable international counterparts, such as the European Union, United Kingdom, Australia, Ireland, and Canada are moving towards or have already established modern frameworks to better regulate platforms.

Want to know more? A summary of the current content and media environment is in Appendix A.

People told us about the types of harm they experience and what they want to change

1. During our first phase of targeted engagement, we had more than 50 workshops to understand the types of harms being experienced from content, and the impacts of harm in New Zealand. Workshops were with various individuals, government and non-government agencies, regulators, media industry bodies, online platforms, Māori, and different community, ethnic and faith-based groups. We knew from research that a large proportion of New Zealanders were concerned about online harms – a Classification Office research report ('What we're watching') published in June 2022 indicated that 83% of people were concerned about harmful or inappropriate content on social media, video-sharing sites or other websites.

2. You can read the summary of that engagement on our website.

People do not feel prepared to deal with harmful content

3. Most of the conversations centred on experiences of harm and the need to reduce the risk of harm before it's created, shared and experienced by others.

4. Many participants did not feel prepared to deal with harmful content, whether it was for themselves or others they cared for, like children. They identified social media as the biggest source for promoting and distributing harmful content, but it was not the only source within the system. People rarely experienced the most harmful content, and feedback highlighted there is no tolerance for this content. We also heard that the system needed to respond faster to prevent access to harmful content.

> "...there was a suicide video that was going around social media, especially on TikTok … for a while I randomly got videos where people made jokes about self-injury. I [clicked] 'not interested' [on] so many videos cos I didn't want to see them, but I genuinely have no clue why it was part of my algorithm in the first place?"
>
> **A young person, talking about an experience that made them feel unsafe online**

The new framework should recognise the harm Māori experience through discriminatory and threatening content

5. During our targeted engagement, we heard that Māori experience harm from content. Sometimes this is in the same way as other New Zealanders, for example through tamariki being exposed to things that are not age-appropriate. Sometimes, the harm is more specific through racist content that can be discriminatory and threatening.

6. The people we met with told us the new framework should recognise that the harm they experience from content is exacerbated by discrimination and injustice experienced historically. The new framework should meet New Zealand's social and cultural standards. Māori have an interest in ensuring that the outcomes, objectives and minimum requirements in a new framework meet their needs and recognise te ao Māori perspectives.

Some groups experience more harm, particularly on social media

7. Community and minority groups are increasingly experiencing discrimination or are being targeted by hate speech and harassment, particularly on social media. This has a detrimental impact on users and society. It can lead to individuals or groups experiencing a lack of belonging and withdrawing entirely from community spaces to avoid discrimination.

8. A Netsafe survey found that 16% of Asian participants and 13% of Māori and Pacific participants experienced online hate speech one or more times in the prior year. For New Zealand European or Pākehā respondents, only 9% had experienced hate speech.

9. The issue of misogynistic abuse and violent threats against women in New Zealand – including wāhine Māori – was raised a number of times by participants as something that causes harm not only to the women who are the direct targets, but also has impacts on their whānau and wider family and friends.

> "Creators of harmful content need to be held accountable and educated on how they can be hurtful online."
>
> **A representative of a national community organisation**

Defining unsafe or harmful content

10. We talk in this document about both 'harm' and 'safety'. Our proposed consumer protection approach emphasises keeping people safe by reducing the risk of harm occurring, and it also has measures to respond when harm has occurred.

    - Content is considered harmful where the experience of content causes loss or damage to rights, property, or physical, social, emotional, and mental wellbeing. Being harmed is distinct from feeling offended (although content that is harmful will often also cause offence).
    - Unsafe content is where there is a risk of harm occurring *if that content* was experienced by a person. Everyone's risk profile is different. Safeguards can be put in place to help to reduce risks.

Unsafe content can impact all levels of society – affecting individuals, communities and wider society

11. While most content is harmless, there is a wide range of unsafe content. We are particularly concerned about content that is unsafe for children and young people, given the impact it can have on their development and mental wellbeing.

12. Some forms of content can be unsafe for communities, or for society as a whole – for example, if it discriminates against an ethnic group, or interferes in democratic processes. These forms of harm also fall within our proposals.

13. Later in this discussion document, we look into how our proposals would be applied to specific examples of unsafe content. Three examples are highlighted: promoting disordered eating, adult content in video games, and violent misogynistic content.

FOCUS QUESTIONS

1. What do you think about the way we have defined unsafe and harmful content?
2. Does the way we have defined unsafe and harmful content accurately reflect your concerns and/or experiences relating to harmful content?

Our objective is to enhance protection for New Zealanders by reducing their exposure to harmful content, regardless of delivery method

14. The objective of this review of New Zealand's regulatory system for media and online platforms is to enhance protection for New Zealanders by reducing their exposure to harmful content, regardless of delivery method. The aim is to provide better protection for vulnerable groups and achieve better consumer protection for all New Zealanders.

15. Our work to design a new framework is guided by this overarching objective, nine secondary objectives for addressing harmful or unsafe content, and a set of principles that promote shared responsibility for consumer safety and protection of human rights.

16. We discuss these in more detail below and in Appendix B and C. You can also read more about the nine secondary objectives, the criteria applied to analyse options and our analysis on the Internal Affairs website.

Our work is guided by the following principles

17. To ensure a safe and inclusive content environment, responsibility should be allocated between individuals, platforms (analogue, digital, and online providers), and government. Interventions should be reasonable and justified in order to protect democratic rights such as freedom of expression and freedom of the press.

18. The full principles can be found in Appendix B.

Better protections should not detract from human rights

19. Protections from unsafe content should support human rights and not detract from them (see Appendix C). Human rights empower individuals and communities. Freedom of expression and a free press are cornerstones to support a healthy and vibrant democracy.

20. Freedom of expression includes the freedom to seek, receive, and impart information and opinions of any kind in any form. It is protected in domestic law and through international conventions and commitments. The principle of freedom of the press is important in holding government and those who exercise public power to account. It also supports democracy by keeping the public informed on important issues.

Many different rights are impacted by how unsafe content is regulated

21. The overarching objective must be consistent with the various rights set out in the New Zealand Bill of Rights Act, Human Rights Act, and Privacy Act. These include freedom of expression, non-discrimination, and privacy rights.

22. Where there is a potential clash between different rights, our proposals look to strike an appropriate balance and to ensure that all responses are proportionate to the risk of harm.

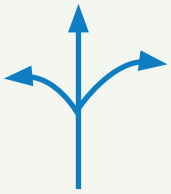
About our proposed new framework to regulate platforms

23. Through these proposals, we want to achieve a single regulatory framework that reduces the risk of consumers, particularly children and young people, being exposed to unsafe content on online services and media platforms. The regulatory framework will cover all platforms, regardless of format or type, but the obligations will predominantly be on larger platforms.

24. To achieve this, the framework needs to be:

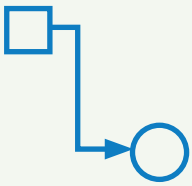
MODERN

Able to respond to protect consumers as they navigate the wide variety of content and platforms that are available today and in the future



FLEXIBLE

Easily adaptable to emerging technologies, new platforms, and any future changes to social values or expectations



SIMPLE

Easier for consumers and platforms to understand and comply with, and for the new regulator to regulate.

What are we proposing?

25. The core elements of our proposal are based on the principle that platforms are responsible for the safety of the products and services they provide. We are proposing a regulatory framework that will give this principle legal force and establish a supporting framework that sets out New Zealanders' expectations about how this is given effect in practice.

26. There are four key elements of our proposals:

    - An **industry regulation model** that uses codes of practice, which set out expectations for an industry or sector group to achieve safety objectives. This will enable Parliament to set clear expectations for platforms to take steps that manage the risks of content to their consumers. There will be higher standards for industry to protect children and young people from unsafe content. Industry regulation would focus on consumer safety because it would put primary safety obligations on the providers of a service, and not its consumers and end-users.
    - Codes of practice must be approved by **a regulator**, which would be established to oversee the framework and would be at arm's length from government. The new regulator would have fully independent decision-making, like the current Broadcasting Standards Authority and the Classification Office. It would also have broader responsibilities for education and safety awareness-raising.
    - We expect the new regulator to be an 'industry regulator', which means the legislation would place requirements on platforms and industry – the regulator and industry would work together to develop and implement the rules. The regulator would only approve a code practice if it is satisfied that the code would likely deliver on high-level safety objectives and any minimum expectations set in legislation and regulations.
    - The regulator would not have any powers over individual content creators who use platforms to share legal content and would not be involved in moderating individual pieces of legal content.
    - **Continuing to remove and block access to the most harmful content** – government interventions to censor content and criminalise associated behaviour would remain at the extreme high end of harm. The new framework would continue criminal sanctions for dealing with 'objectionable' (illegal) material, including powers to issue takedown notices for this type of content.
    - Further investment in **education and awareness initiatives** to promote safer media and online content experiences. This could include initiatives to improve media and online safety literacy.

In this new framework, everyone will play their part

27. Under our proposed new framework, everyone would play a part in achieving safer media experiences.

Consumers are empowered and supported to make choices about what is safe for them.

Platforms and industry proactively manage content through adopting codes of practice, which deliver on high-level safety objectives that are set out in legislation.

Regulatory oversight, monitoring, compliance, and enforcement, with the aim of working with industry to develop and maintain codes of practice so that consumers and communities can continue to have thriving and safe spaces.

Access to illegal material remains subject to government intervention, including being blocked or banned, as is the case now.

Roles in a new framework

28. The proposed roles and responsibilities in the new framework are described at a high level below and discussed in more detail on page 58.

29. The proposed roles and responsibilities are:

    - **Government** passes legislation that sets out the high-level safety objectives that codes of practice must achieve, sets the mandate and scope for the new regulator, funds the regulator, and appoints the board of the regulator. A government department would be tasked to administer the legislation and monitor the regulator's performance.
    - A single and centralised **independent regulator** runs the system. It oversees the framework, approves codes of practice that align to the high-level safety objectives and minimum expectations, and enforces those codes; it reviews whether codes are continuing to meet high-level safety objectives, has takedown powers, and supports education and awareness-raising. The regulator's decision-making would be fully independent of Ministers.
    - There is a role for **Māori** in the governance and decision-making of the regulator, as well as in developing the codes and delivering education.
    - There would still be a place for a **censorship** role, with powers to determine whether the most harmful content should be classified as illegal to create, possess, or share.
    - **Government agencies** such as the Police, Customs, and the Department of Internal Affairs continue to investigate and prosecute those who possess and share illegal material such as images of child sexual abuse.
    - Most **platforms** are obliged to comply with codes of practice, which would be developed by **industry** (usually through industry representative bodies or self-regulatory bodies) in collaboration with the regulator, to improve consumer safety by proactive and consistent management of both content and harmful conduct in relation to content.
    - The **public, civil society, and non-government organisations** can engage with the regulator and participate in developing the codes. Non-government organisations continue to support education and raising awareness, and help people navigate complaints processes.

The major change, in practice, would be in the way social media platforms are regulated

A risk-based, code-based industry regulation approach is not novel, domestically or internationally. Traditional media already operate under codes and under multiple regulatory regimes. They are likely to welcome the introduction of a more level playing-field, and a simplified approach for multi-platform providers. Consumers of traditional media will see little change in their experience. There would be simplified complaints processes and avenues to raise systemic concerns about trends and patterns of potentially unsafe content with the new regulator.

The biggest change will be for social media platforms. The proposed new regulator will provide an opportunity for New Zealand to influence platforms' practices. For example, codes could include rules for responsible and transparent design of ranking algorithms like Facebook's Newsfeed, transparency metrics for reporting on content-related harm, and limits on the ability for new users and users who post harmful content to reach large audiences. In time, the new regulator could also ensure that all firms delivering services to New Zealanders provide size-appropriate reporting on the prevalence of harmful content on their platform. The regulator could require reporting from a user perspective, as well as focusing on the volume of infringing content that is present on platforms. In Europe, the new Digital Services Act will require major platforms to start providing anonymised data for third-party monitoring.

As a result, New Zealanders should have a better online experience. Unintentional exposure to the most harmful content on social media should be far less common. For lower-risk content, consumers could see more warning labels and content advisories, and there could be changes to the way algorithms recommend content so that harmful content is not actively pushed to users. For social media content, consumers will have access to a complaints process that is tailored to New Zealand requirements, and social media companies would apply terms and conditions of service and community guidelines that align with New Zealand expectations.

Platforms will need to undertake significant work as part of the wider tech industry. At this stage they are not organised as a grouping in the way that other platforms have long been. There are widespread calls for platforms to engage more with their users in New Zealand. The new regulator could help ensure that different communities in New Zealand are aware of the content curation systems that affect them and can provide input on the impact of those systems on their experience of online services.

Another significant change under the proposed approach relates to the classification of restricted content – primarily minimum age restrictions on movies or games, such as Restricted 18 (or 'R18') – that make it illegal to supply or exhibit these publications to someone who does not meet the age or other restriction criteria. Under the proposals, the approach of legally enforceable classifications would cease, and age restrictions would become recommendations through the code system, for example 'Recommended 18'. This change is necessary to embed consumer warnings and age-rating information into the code system.

Platforms would be required to provide consumer warnings and age ratings in line with New Zealand standards. This is already the case for broadcast content and commercial video on-demand. The processes and services to deliver this type of consumer information are already in place. The change is necessary to ensure there is flexibility in how consumer advice is displayed across a wide range of services. It also reflects that the volume of content of this nature is now too high for a regulator to make a legal determination on it all. When a platform produces age ratings and warnings, it cannot carry the same legally enforceable effect as one issued by the Classification Office, which is why it is necessary to make the change from 'Restrictions' to 'Recommendations'. Platforms would be required to ensure safeguards are in place at the point of sale. To meet their consumer safety objectives under the code, they may impose contractual obligations on retailers.

How the proposed framework would work

Government sets the safety objectives codes of practice must achieve

High-level safety objectives/outcomes

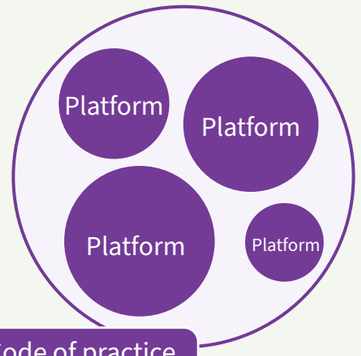
Example:
Children are not accessing age-inappropriate content

Policy statements on minimum expectations to inform code development (regulations)

Example:
Services must report annually on the number of complaints made, upheld and rejected. These categories are defined as…

Codes of practice are developed by industry groups, with the regulator, that set out the enforceable expectations for their industry to collectively achieve the safety objectives

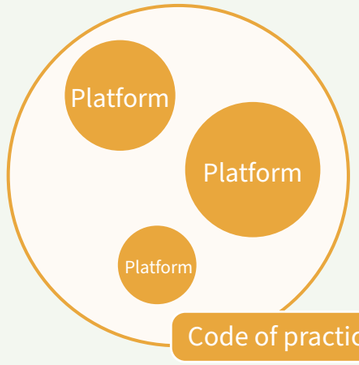
Representative body for online/social media



Code of practice online content

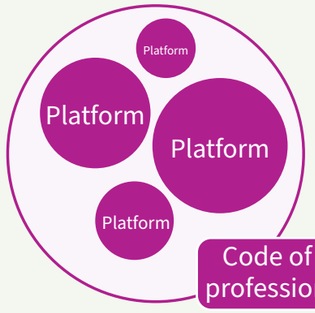
Code of practice social media

Another representative body e.g. gaming



Code of practice

Representative body for professional media



Code of practice professional media

Platforms set out for consumers the safeguards they will put in place to meet their industry code of practice

Example terms of service / community standards on what users can expect:

- Standards for unacceptable content on the platform
- Warnings and consumer information the platform provides to inform users about content safety
- User and parental controls to reduce unsafe content
- Steps taken to protect children and young people
- Information on recommendation systems, accessing their data
- How to make a complaint and appeal a decision
- How the platform is funded and the incentives for creators

The regulator ensures the effective operation of the system

- Approve codes. The regulator may only approve codes that meet the high level safety objectives and any policy statements on minimum expectations
- Support code development and code reviews
- Supports the development of policy statements on minimum expectations
- Periodic performance reviews
- Investigations into breaches of terms of service and codes of practice
- Community perspectives
- International alignment
- Research into content issues

Platforms will play a key role in the function of the new framework

30. In the new framework, platforms would be obliged to improve consumer safety by proactive and consistent moderation of both content and harmful conduct in relation to content.

31. Platforms are a broad group ranging from enormous companies through to a single person with a website hosted at home. However, there would be little consumer safety value in placing a high compliance burden on very small platforms.

32. Therefore, most of the obligations in the proposed framework would relate to **'Regulated Platforms'**. Regulated platforms are platforms where their primary purpose is to make content available. This definition intends to exclude platforms and services that exist primarily to enable other services and products – for example, the websites of retailers, professional services, clubs, and charities would not be considered Regulated Platforms. Internet Service Providers (ISPs) would also be excluded from this definition unless their business also provides content through a platform or service.

Regulated Platforms are platforms where their primary purpose is to make content available

The platform or service is likely to have one of the following:

- an expected audience of 100,000 or more annually; or
- 25,000 account holders annually in New Zealand.

Alternatively, the regulator may designate a platform as a Regulated Platform if it is unclear whether the threshold has been met, or the risk of harm from that platform is significant.

Regulated Platforms will not have to be a New Zealand-registered company or resident to be in scope. As defined, their inclusion will be determined by their user/audience base here.

We think it's simpler for all types of platforms to be included in this regulatory framework

33. Our current regulatory settings group media organisations by formats and types, like film, broadcast, advertising, and press/print. Some platforms sit outside the regulatory system, such as social media, while others sit in a grey area, such as free video on-demand services. It's rare that a platform fits into just one of these boxes. In practice, the same content may be broadcast on television and radio, live streamed, and shared via on-demand services.

34. We think it's simpler for consumers and platforms to bring all this together into one regulatory framework, and to set compliance requirements by scale rather than by type of platform. This will make it an even playing-field for all participants. It will make it simpler for platforms that offer a variety of services or operate across multiple channels. It will also remove the grey areas where platforms and consumers are unsure which rules and processes apply to address unsafe content.

35. The industry regulation approach reflects that every platform is different, and there are also differences in how much control a platform has over the content it provides. The approach therefore acknowledges that industry is best placed to know what actions they can take to reduce the risk of consumers being exposed to unsafe content on their platforms. Platforms would also continue to maintain control and ownership over the way they manage their processes, but must also make commitments to ensure their platforms are safe in line with New Zealand's expectations.

A similar model – Codes under the Broadcasting Act

The Broadcasting Act 1989 created a system of broadcasting standards. There are eleven areas specified in the Act from which standards have been developed. Broadcasters and the Broadcasting Standards Authority develop and review the Codes of Broadcasting Practice in consultation with other stakeholders and the public. The Codes provide guidance on the standards to all broadcasters, including those on radio, free-to-air television and pay television, and their audiences.

Liabilities for authors, creators, and publishers

36. In the new framework, authors, creators, and publishers of content would need to comply with the requirements of the platforms they use – but are not directly subject to the regulator (unless the publisher is also a platform). Failure to comply with the requirements could lead to authors, creators, and publishers being suspended, removed, or prevented from accessing the platforms' services. They may also be blacklisted if they show repeated harmful behaviour.

Our proposed approach is informed by industry knowledge

37. Our proposed approach is informed by industry knowledge and grounded by Parliament, community, and civil society expectations. We considered how this approach would best address the problems resulting from our current fragmented and inconsistent regulatory system. By partnering with industry to develop codes of practice, we'd identify the best way for industry to play a bigger part in managing content so that it aligns with our constitutional arrangements and cultural and social expectations.

38. It is not feasible to prevent all harmful content from being created, but it is possible to reduce unwanted exposure to harmful content and improve how we respond. We need to address harm in a structured way that reflects individual and community needs, while also simplifying and standardising industry processes across the media and online environment.

39. It is also critical for the regulator to have more oversight to engage on issues such as algorithmic controls to prevent amplifying very harmful content, transparency reporting and other accountability measures.

What people in the industry and community groups told us about moving to an industry regulation model

Technology and social media platforms said they want regulations to be more consistent and better aligned across countries, so that they are also able to retain flexibility for innovation.

They also recommended that rules are proportionate – that is, compliance requirements are scalable so smaller companies can also be regulated effectively, and due regard is given to rights like freedom of expression. New Zealand broadcasters also suggested better alignment between their current framework and any new approach to address gaps in how content is regulated across different platforms and channels.

Community and civil society groups told us that media and online standards need to continually evolve to meet New Zealand society's increasing cultural, religious, and identity diversity. Rapid technological innovations in how content is created and experienced means the measures to help keep people safe need to constantly adapt to these innovations.

A common theme from community groups and the media and technology sector is that the sector largely holds 'on the ground' technical expertise and knowledge of the day-to-day issues of managing content to reflect this dynamic environment. As a result, we need to regulate online content effectively to leverage this expertise in the industry.

FOCUS QUESTIONS

3. Have we got the right breakdown of roles and responsibilities between legislation, the regulator and industry?
4. Do you agree that government should set high-level safety objectives and minimum expectations that industry must meet through codes of practice?
5. Do you agree with how we have defined 'platforms'? Do you think our definition is too narrow, or too broad? If so, why?
6. We are trying to focus on platforms with the greatest reach and potential to cause harm. Have we got the criteria for 'Regulated Platforms' right?

We need to decide what the right balance of regulatory requirements should be in this model

40. We think that our proposed new framework strikes the right balance between:
    - educating and supporting people to keep themselves safe
    - encouraging industry to do the right thing
    - being directive enough to create change to reduce the risk of exposure to unsafe content.

We've indicated where there are choices about being more supportive or prescriptive

41. We've indicated in the next sections where we have considered, but not recommended, options to be either more supportive or more prescriptive in how the regulatory framework operates. We will continue to engage with experts, and take in public feedback, to determine whether a supportive or prescriptive approach might be best suited.

42. A supportive approach focuses on collaboration and partnership:

    - More emphasis would be placed on education and awareness initiatives.
    - Industry would have more discretion to self-regulate by setting and agreeing its own standards.
    - Government would have limited oversight, except for (as at present) illegal 'objectionable' material.
    - The role of the content consumer's role in keeping themselves away from harm is emphasised.
    - It could lack the teeth to address more significant risks in the absence of other incentives for industry to perform better.

43. A prescriptive approach means the legislation would be more directive to industry:

    - It would have detailed outcome requirements and rules for meeting those requirements.
    - It would have stronger enforcement powers for the regulator, and more powers to make content publicly unavailable.
    - It would have stronger powers to create change, but risks being inflexible, discourages innovation, is difficult to implement, and could restrict legitimate forms of expression.

44. These options are set out in more detail in the Regulatory Impact Assessment. We welcome your views on whether you prefer these, or other variations to the proposed framework.

A code of practice would set out how a Regulated Platform will manage risk of harm

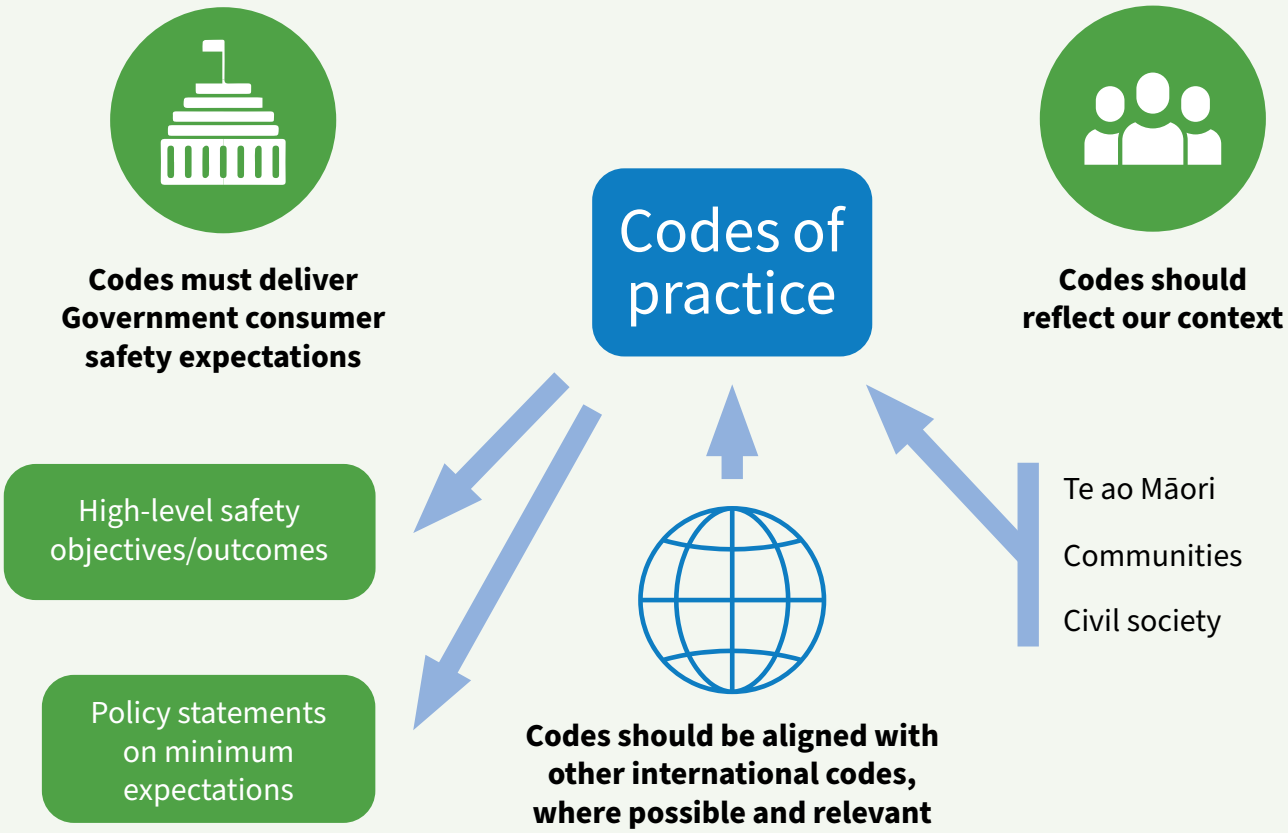
45. Regulated Platforms would need to implement approved codes of practice that meet legislated core safety objectives and minimum expectations.

46. We anticipate that these codes would be a collaborative effort between industry groups and the new regulator. The regulator would have powers to endorse specific industry groups to develop codes on behalf of their member platforms, and powers to take over leadership of code development should an industry group fail to make progress on an acceptable code. We anticipate that platforms that have similar services or offerings would be part of the same industry group.

47. We expect the code development process to first focus on priority areas and issues at risk of causing the greatest harm, which include provisions to keep children safe and algorithmic controls to prevent the amplification of very unsafe content. This would align with our risk-based approach.

48. We also expect the code development process to include transparency and reporting requirements, including providing consumers with information about the operation of the platforms.

Codes should reflect our domestic context and aim to align internationally, where possible



Our proposed approach builds in monitoring and accountability requirements

49. Our proposed approach builds in monitoring and accountability requirements, including transparency reporting. Continuous review mechanisms will make sure rules and processes are adaptable and fit for purpose.

50. The core safety objectives and minimum expectations for Regulated Platforms' codes of practice would cover all of the following:

Processes to prevent, remove, or reduce exposure to unsafe content

51. Processes will include:

    - safeguards and barriers to deter the upload and creation of risky content – for example, time-lags or verification requirements for specific types of content
    - controls to prevent children from accessing age-inappropriate content, such as parental controls, age verification, or children-only versions of platforms
    - methods to identify harmful content and prevent how it is shared and amplified. This would include ways to remove this content, such as:
        - through human and Artificial Intelligence (AI) moderation practices
        - downgrading content visibility
        - removing recidivist individuals and entities – such as identifying bots and troll accounts that routinely post unsafe content
        - using authenticity markers.

Fit-for-purpose consumer-focused processes

52. Processes will include:

    - actively managing algorithms and other AI-based content engagement tools for at-risk content – for example, algorithm recommendations that push content leading to a higher risk of harm for certain populations who may have vulnerabilities or have been targeted
    - how consumers are alerted to content that could cause harm
    - accessible processes for consumer complaints for particular content.

How Regulated Platforms will report on these measures

53. Reporting will include:

    - periodic transparency reporting
    - how impact of harm from content or conduct is being reduced, including actively managing algorithms and other AI-based content engagement tools
    - periodic review of Regulated Platforms' performance against codes.

54. Regulated Platforms would be expected to use transparent and regular reporting on their algorithmic controls and settings. By doing so, Regulated Platforms would maintain the confidence of the regulator and the public that they were playing their part in reducing the risk of harm for all users.

55. For consistency, we expect that codes of practice would be developed at an industry-sector level. Obligations and requirements would be scaled so they are proportionate and can be applied across the different types and sizes of platforms. All Regulated Platforms would need to comply with the applicable codes, regardless of whether they were involved in developing the code.

Example interaction between Government objectives/minimum standards and Regulated Platform codes of practice

EXAMPLE: High-level safety objectives/outcomes

Platforms must take steps to reduce the likelihood of children experiencing age-inappropriate content on their services.

Example 1: Code provisions for platforms with linear broadcast services e.g., TV and radio

- Content intended for 16+ audiences only will not be broadcast or live streamed between 6.30am and 8.30pm.

Example 2: Code provisions for platforms with user generated content

- A parental control system will be available to limit unintentional access to explicit content.
- A machine learning process will be used to flag potentially explicit user uploaded content; a warning will be displayed.
- Content considered to be 18+ will be in breach of the Terms of Service.

EXAMPLE: Policy statements on minimum expectations

Platforms must make accessible, advice on appropriate consumer age where practicable.

Platforms must report on the number of complaints made, upheld and appealed in its quarterly transparency report.

Example 1: Code provisions for platforms with linear broadcast services e.g., TV and radio

- Minimum recommendation ages will be displayed before pre-recorded video is played.
- Minimum recommendation ages will be played before pre-recorded audio is played.
- The quarterly transparency report will include complaints made, upheld and appealed for inappropriate content for children

Example 2: Code provisions for platforms with user generated content

- A 16+ warning will be displayed for identified potentially explicit content.
- The quarterly transparency report will include complaints made, upheld and appealed for inappropriate content for children

FOCUS QUESTIONS

7. Do you think we have covered all core requirements needed for codes of practice?
8. What types of codes and industry groupings do you think should be grouped together?
9. Do you think some types of platforms should be looked at more closely, depending on the type of content they have?

Codes would be developed through an inclusive process

56. Codes must deliver requirements to reduce the risk of exposure to unsafe content, while also reflecting our community expectations. This requires significant opportunities for public input. The regulator would also specify processes that need to be followed to develop a code of practice.

57. The regulator would work with industry to develop codes in a way that leveraged off industry expertise and knowledge. They'd craft workable solutions to reduce risk of harm within the overall expectation of high-level safety outcomes. Industry representative bodies or self-regulatory bodies would generally have a lead role in developing codes on behalf of their member organisations.

The regulator will be responsible for meeting the government's obligations under Te Tiriti o Waitangi

58. The regulator will be responsible for meeting the government's obligations under Te Tiriti. This means appropriate processes would be built into the code development and approval process, including ensuring Māori participation and that codes reflect Māori social and cultural values.

59. Regulated Platforms, as private entities, will not be legally required to give direct effect to Te Tiriti obligations in their operations. They will, however, have to comply with the regulator's requirements.

Industry and the regulator would be expected to involve communities and civil society organisations in developing codes of practice

60. Industry groups would be expected to involve communities and civil society organisations in developing codes. The regulator may also set requirements for engagement with Māori. Community input would be essential to ensure that systems to address harms, including complaints and review processes, reflect individual and community expectations.

61. This input could be through participation in ad hoc or specific reference groups or advisory networks. Similar to the Christchurch Call process, civil society would play an important role in supporting the effective development and implementation of codes. This could be through:

    - offering expert advice on how to implement the safety objectives and policy statements on minimum expectations, including appeal and review pathways, in a manner consistent with a free, open and secure internet, and with international human rights law
    - providing input into ways to increase transparency within the system.

The regulator would approve codes of practice

62. Once developed, the regulator would approve codes of practice. In assessing a particular code for approval, they would consider:

    - whether the provisions in the code met safety objectives and gave effect to policy statements on minimum expectations
    - whether the code was supported by adequate complaints processes and transparent reporting requirements
    - whether the code provisions reflected Te Tiriti and New Zealand's social and cultural expectations
    - whether the public engagement process to develop the code had been adequate, including engagement with Māori.

63. The regulator would need to have mechanisms in place to ensure their decision-making on codes was informed by a community perspective. We anticipate that a role for Māori would be built into the decision-making structures of the regulator.

Regulated Platforms would be required to align their terms of service and operating policies to the applicable codes, and to implement them in practice

64. Most of the responsibility to reduce risk of harm through codes would be with Regulated Platforms. In the first instance, Regulated Platforms would be responsible for monitoring harmful content and conduct as part of their day-to-day operations. Regulated Platforms will need to demonstrate that their terms of service and operating policies comply with the relevant code(s) for their platform.

65. Regulated Platforms would be supported to implement the codes and meet their obligations. The regulator would develop appropriate regulatory guidance and advice such as implementation guidelines. The regulator would also provide feedback on Regulated Platforms' compliance programmes and make recommendations to address deficiencies or improve safeguards and safety tools, as part of their periodic reviews of the codes.

Codes are being used in the industry in commercial video-on-demand

66. In commercial video-on-demand, industry has responsibilities under codes in the current system. Advisories are now applied solely by commercial video-on-demand providers and are consistent with a code that specifies high-level requirements and guidance material to achieve consistency. Annual reviews are conducted by the Classification Office to ensure they comply with minimum expectations.

67. Regulated Platforms that implement codes will need to enforce their terms of service and community standards to manage content in line with the high-level safety objectives and minimum expectations. For some platforms, this will mean factoring risk of harm into their editorial choices about the content they provide. For Regulated Platforms that host user-generated content, their management policies and practices will need to be consistent with the applicable code of practice.

Alternative approaches for implementing codes of practice

A supportive approach

- The regulator would encourage industry to consider providing online safety tools as appropriate, as a further avenue to reduce harm.
- Industry training bodies or sector groups would have opportunities to provide specific awareness and cultural competency training to journalists, content moderators, and other media sector actors.
- The regulator would have a stronger focus on their educative and awareness role and build consumer resilience.

A prescriptive approach

- Instead of best-practice guidelines, more specific regulatory requirements could set out how codes are implemented, particularly for moderation requirements.
- Regulated Platforms over a certain size threshold could be required to appoint a New Zealand-based representative, who is legally responsible for responding to requests for assistance and complaints from law enforcement and security agencies.

FOCUS QUESTIONS

10. Do you think the proposed code development process would be flexible enough to respond to different types of content and harm in the future? Is there something we're not thinking about?

11. What do you think about the different approaches we could take, including the supportive and prescriptive alternatives?

The regulator would monitor and enforce Regulated Platforms' code compliance

68. Regulated Platforms must incorporate codes into their terms of service and operating policies. The regulator would have regulatory functions and powers to monitor and enforce code compliance. This is so they are applied consistently across common service provisions and content-specific harms. The regulator's intention would be to ensure content is effectively managed, rather than to take an overly punitive approach to enforcing compliance.

69. We also propose the regulator adopts a flexible and risk-based approach to ensuring a platform's compliance with relevant codes of practice. This will enable opportunities to address the existing problems of inconsistent rules for different media bodies, technology, and social media companies. This is an improvement on our current approach, which sees the issues stemming from an existing regulatory structure based on outdated rules and processes.

The regulator would recommend remedial steps where a Regulated Platform breached its obligations

70. The regulator would recommend remedial steps in cases where a Regulated Platform deliberately breached its obligations, or other gaps were identified. This could include the regulator conducting investigations into breaches of terms of service and codes of practice, for example where a Regulated Platform did not take any preventive measures to stop the spread of harmful content when notified of its existence.

Appeals from platforms' complaint processes would go to a quasi-judicial body

71. Appeals from platforms' complaint processes would also go to a quasi-judicial body associated with or approved by the regulator. This would be incorporated into the codes that apply to those platforms. In many cases, individual complaints for user-generated content that cannot be resolved by the Regulated Platform would also involve issues of harm covered under other existing systems – for example, online bullying.

72. Compliance measures are likely to include levers such as regular transparency reporting requirements.

73. Enforcement levers could include:

    - providing support such as targeted guidance on meeting specific obligations, private and public warnings
    - imposing enforceable undertakings – commitments from Regulated Platforms to address deficiencies within a stipulated time and report periodically on progress being made
    - fines for substantive non-compliance, and other potential tools for persistent non-compliance.

74. These requirements will be scalable to ensure that the compliance of smaller Regulated Platforms can also be regulated and enforced. By building scalable enforcement measures into the system, compliance can be achieved more effectively.

How the regulator would monitor a Regulated Platform's compliance programme

75. The regulator's monitoring function would involve evaluating the effectiveness of a Regulated Platform's compliance programme with relevant codes of practice. The evaluation would be outcomes-focused – it would not examine the precise design of the processes implemented. But it would assess the methodology and evidence relied on by the Regulated Platform to design the compliance programme. The monitoring function would also be risk-based, with not all Regulated Platforms receiving the same level of scrutiny.

To monitor a platform's compliance with relevant codes, the regulator would do the following:

- **Require Regulated Platforms to submit transparency reports** on how they are managing people's rights and protections. This could show how they are managing people's data, the volume and nature of user complaints, and how effective the safety measures are in preventing and reducing risk of harm.
- **Review complaints** relating to Regulated Platforms' implementation of codes, but not for their decisions on specific pieces of content (except for referrals to assess potentially illegal material).
- **Share information with domestic and international agencies** to support law enforcement efforts to prevent, detect, and deter illegal material and associated conduct.
- **Require Regulated Platforms to submit periodic audits** conducted by a qualified independent third party, to provide a systems-level check of measures and processes in place to meet compliance obligations.
- **Require an audit outside the periodic timeframe**, if it has reasonable cause to believe that there are substantive failings or deficiencies in the Regulated Platform's compliance programme that need to be investigated more.
- **Require Regulated Platforms to provide relevant information to assess their level of compliance with the code**. Information could include records, documents, and responses to queries. Exceptions could apply, for example where the requested information is legally privileged.
- **Provide feedback on Regulated Platforms' compliance programmes** and make recommendations to address deficiencies or improve safeguards and safety tools to address content and conduct risks for harmful content.

Example

How would a code-based approach deal with violent misogynistic content?

The internet's size and accessibility has made it easier to create and spread harmful content that targets specific groups of people – for example, violent misogynistic threats online. This affects not only the women who are targeted, but also their whānau and wider community's sense of safety and wellbeing.

What could users expect to see from Regulated Platforms?

Greater use of warnings or consumer advisory information could help users to make informed decisions before viewing this harmful content

Platforms could be required through codes to have robust tools, like targeted moderation practices, to reduce the prevalence of this content. This could include down-ranking, or that this content is shown alongside counter perspectives

Users would have better pathways for reporting harmful content, along with flagging by artificial intelligence

Platforms could have early intervention systems that detect and warn users of the harm from this content before it is posted or shared

Platforms could be required to take action against users that have breached their terms of service

Some platforms may need to remove this content if it poses a risk to their user group, for example, where they have a large number of young users

The regulator would have powers to enforce compliance

76. We propose the regulator's powers to enforce compliance are to support Regulated Platforms to meet their obligations. Based on this role, we propose the regulator's enforcement powers should include the following:

    - Direct a Regulated Platform to take remedial action to address identified gaps or deficiencies in their systems or processes within a specific period.
    - Issue formal warnings, which could include issuing public notices citing the platform's failure to comply, to inform and raise consumer awareness.
    - Seek civil penalties for significant regulatory non-compliance.
    - Require platforms to take down illegal material quickly when directed to do so and be liable for not meeting a stipulated timeframe. Proposed powers related to illegal material are covered further below.

The regulator would not directly undertake prosecutions for any criminal non-compliance

77. The regulator would not directly undertake prosecutions for any criminal non-compliance, for example hosting objectionable material. It would recommend the responsible government department take this action.

78. There are two reasons for this:

    - Broadly speaking, the investigation and prosecution of criminal offences is a core State function, which includes making prosecutorial decisions to prosecute offences effectively and efficiently.
    - Secondly, a key element of prosecutorial practice is to ensure independence of the decision-maker. Given the regulator's role to develop, support, approve, and monitor the codes, it is more appropriate that a government department makes prosecutorial decisions.

Continued non-compliance would result in more penalties

79. Continued non-compliance with codes would result in more penalties. Fines would start to be issued for continued or significant non-compliance. Regulated Platforms (even those not based in New Zealand) that repeatedly do not respond to takedown requests for illegal material would also be subject to the criminal penalties applying to individuals and entities who publish and share such material. This reflects the current situation of platforms being liable for knowingly possessing or sharing illegal material.

If Regulated Platforms refuse to manage the most serious risks

80. While the regulator would work to support Regulated Platforms to ensure their terms of service and operating policies comply with codes, there may be some Regulated Platforms that refuse to participate and pose a significant risk to New Zealanders because of the content they make available in New Zealand.

81. There will always be bad actors who deliberately host illegal material and have no intention of ever cooperating with a regulatory system. It may in practice be impossible to take effective action against all of them. This raises the question of what the right 'last resort' remedy might be for persistent and serious non-compliance by platforms that host the most harmful content.

82. We have considered a few options that might encourage all Regulated Platforms to comply, and that provide a way to manage the very worst of risks. These include:

    - imposing further and larger financial penalties
    - issuing enforcement notices to comply, followed by prosecution for breaching New Zealand law
    - asking a judge to impose access and service restrictions that stop the platform providing content to New Zealanders (sometimes called 'service disruption'). These court orders would apply for a set period, or until the platform complied.

83. We do not have a preferred option yet. We are interested in your views on what enforcement powers are needed to manage the most serious non-compliance.

FOCUS QUESTIONS

12. Do you think that the proposed model of enforcing codes of practice would work?
13. Do you think the regulator would have sufficient powers to effectively oversee the framework? Why/why not?
14. Do you agree that the regulator's enforcement powers should be limited to civil liability actions?
15. How do you think the system should respond to persistent non-compliance?

Alternative approaches for the regulator to monitor and enforce compliance with codes of practice

A supportive approach

The regulator would focus only on the most substantive breaches, and would do the following:

- Undertake minimal monitoring or detailed scrutiny of implementation, such as whether consumer safety was built into algorithmic controls and other AI-based content engagement tools.
- Limit its enforcement and compliance powers to substantive breaches of the code(s) and illegal material.
- Only seek civil penalties for significant, wilful, and malicious non-compliance breaches.
- Focus on its educative and awareness role, and on building consumer resilience.

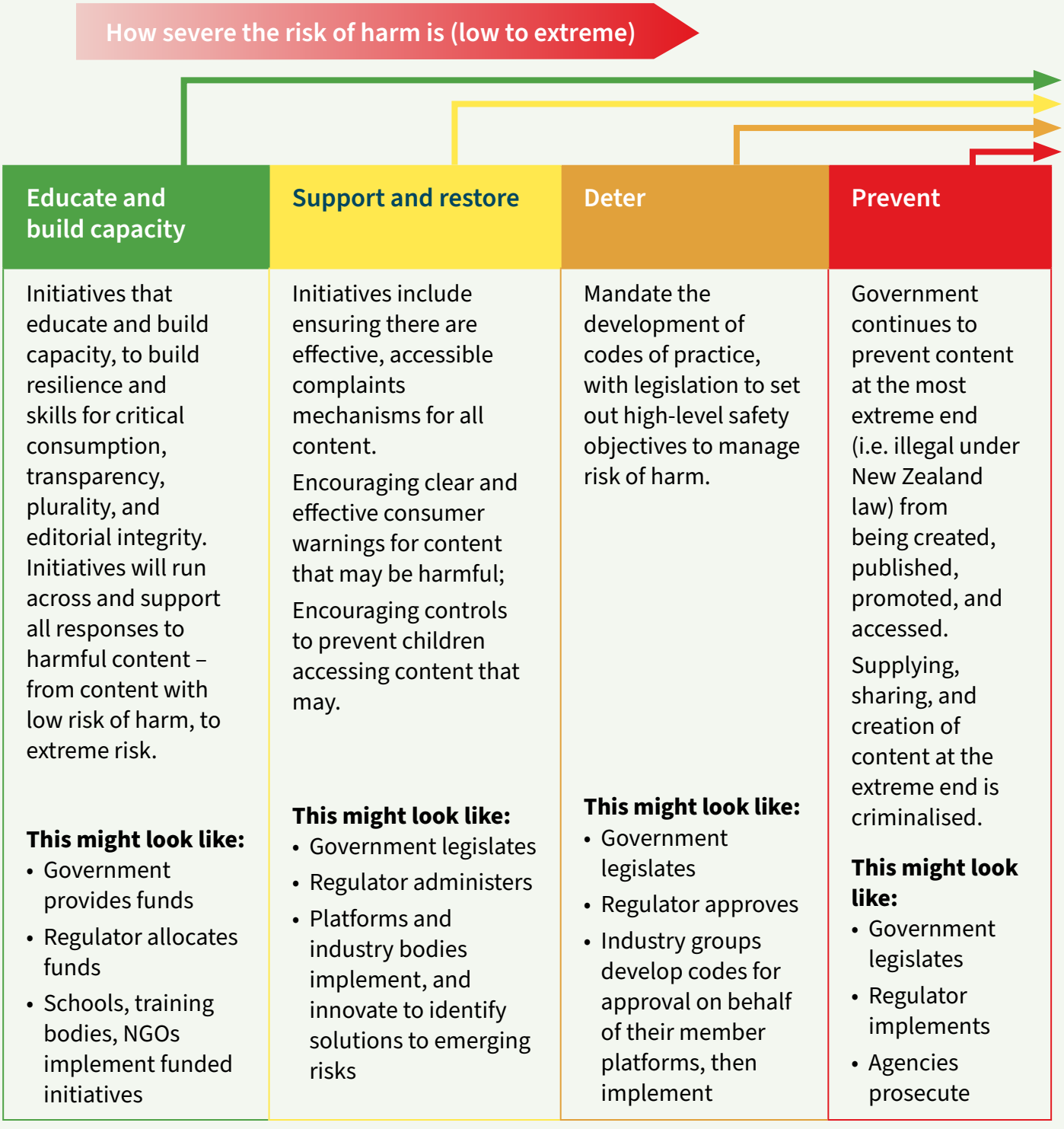
A prescriptive approach

The regulator would take more responsibility to meet safety objectives. This is through greater and more proactive oversight, and stronger and additional powers to deal with breaches. This may include some or all of the following:

- To monitor compliance, the regulator would not only evaluate the methodology and risk assessments applied by Regulated Platforms when developing their compliance programmes, but also assess the specific measures and processes to determine if the obligations are being met.
- Where there is significant non-compliance with a code, the regulator has the power to complete direct mandatory audits.
- Powers that require Regulated Platforms to assist in investigations for troubling but not illegal content.
- Undertake criminal prosecutions against Regulated Platforms on the grounds of significant non-compliance with codes.
- There could be stronger penalties, possibly criminal penalties, for failing to take down illegal material within specified timeframes.
- Service disruption provisions for all platforms, not just the Regulated Platforms that meet a certain size threshold.

Dealing with the most harmful content

The strength and intrusiveness of response levers used will increase as the severity of the risk of harm from content increases. Only at the most extreme end is content stopped. In the middle, content proceeds but in a controlled environment. Consumer safety levers that are focused on educating and strengthening resilience will be included at all severity of risk of harm levels.



Government intervention for illegal material

84. The current classification framework defines specific categories of material (defined as 'objectionable') that is illegal to create, possess, or distribute. The categories are limited to areas such as extreme cruelty and violence, terrorism, and child sexual exploitation. The legal threshold for prohibiting these types of material is deliberately high, given the impact on freedom of expression and other important rights.

85. We propose that the current threshold remains unchanged. Government interventions to censor content and criminalise associated behaviour would remain at the extreme high end of harm. The new framework would continue criminal sanctions for dealing with 'objectionable' (illegal) material, including powers to issue takedown notices for this type of material. These kinds of functions are powerful tools to quickly address the worst harms.

Addressing racial superiority, racial hatred and racial discrimination

86. The Royal Commission of Inquiry into the Christchurch terror attacks recommended amending the current legal definition of 'objectionable' to include racial superiority, racial hatred, and racial discrimination. This was connected to its other related recommendations to improve provisions relating to speech intended to incite hate and hate crimes.

87. The Law Commission has been asked to explore whether this recommendation should fall within the scope of its new reference (which also includes the issues of hate speech and hate-motivated offending). We expect that any law change coming out of that review would likely need to be worked into the legislation we are proposing as an amendment bill at a later stage.

88. These kinds of actions and content have similar features and cause similar harms to people. They often also occur together: speech intended to incite hate and hate crime can be in the form of content hosted by a platform. It is important that a coherent approach is taken across all these areas so that the line between legal and illegal is clear and consistent.

89. Regardless of how the law might be changed to address the most extreme end of incitement and racist content, the development of codes will require Regulated Platforms to meet expectations to reduce the harm caused by discriminatory content on their platforms.

Exercising a censorship role to determine whether material is illegal

90. We are not proposing any changes to the types of material that are currently considered illegal in New Zealand. Under the new framework, the legislation will still provide for a role to make independent assessments of material that is illegal to produce, possess, or share. This function is currently held by the Chief Censor – an independent Crown entity role under the Classification Act. In countries without a dedicated censor role, it can take a long time through the courts to determine whether material breaches the law. Content hosts in these countries can therefore find it harder to be certain about taking down content.

Government would not intervene in individual pieces of content, except where content meets the illegal threshold

91. A mix of requirements and safety outcomes would be set in legislation or regulations. The regulator would not intervene in managing individual pieces of content, except where criminal sanctions and enforcement are warranted. For example, if a piece of content is determined to be illegal by the regulator, the existing law enforcement bodies would take steps as they currently do. The sorts of material that are illegal will not fundamentally change.

92. For platforms that are hosting lawful but unsafe content, the regulator's role is to look at whether the platform's processes for managing risks from content comply with the relevant industry code of practice.

Here are options for how the censorship role could operate – we do not have a clear preference

93. We do not have a clear preference for how this function could operate within the new framework. We also have not considered how censorship decisions would be appealed. There are pros and cons of locating the censorship role with the regulator because of its wide functions.

94. Some options may include the following:

    - **The chief executive of the regulator has the power to determine if something is illegal**. Either Police or relevant government departments would have the power to prosecute. An advantage of this approach is the clear separation between the decision of whether content is illegal from the decision to prosecute. This is similar to the current situation with the Classification Office, where they cannot prosecute and their function is restricted to making assessments on legality and illegality.

- **A 'statutory officer' within the regulator makes censorship decisions**. The statutory officer has additional legislative guarantees of separation from monitoring and investigative functions. This option enhances the independence of the censorship role by separating it within the organisation. They would have deep expertise in applying the law and the factors that go into determining whether content is illegal.
- **A tribunal or panel with legal expertise outside the regulator that can be rapidly convened**. The tribunal or panel would be more visibly impartial, giving the public confidence that the decisions they make are fair and impartial. It would bring together a collection of perspectives to decide whether content is illegal.

We propose to cease legally enforceable classifications

95. Our current classification system restricts some people's access to content. We're mostly familiar with this for restricted films and publications, where these are restricted to people over a minimum age. It is illegal to supply or exhibit these publications to someone who doesn't meet the age criteria for the restricted classification.

96. We propose an approach to cease legally enforceable classifications. Age ratings would become recommendations through the code system. Platforms would need to provide age ratings where required. We expect traditional retailers would be required by contracts to apply those age ratings at the point of sale.

97. This approach reflects that prosecutions are rare for people who exhibit and supply adult content to underage people. Prosecution also only occurs when there are other offences – for example, in cases where the content was exhibited to a child as a form of abuse. There are already laws covering this conduct.

98. Moving to age recommendations means that platforms, with support from the regulator, would take full responsibility for consumer advice. While there will be a shift in legal responsibilities, there will be little change in practice.

99. Sites that host primarily adult material (such as legal pornography sites) will need to implement measures to protect children from accessing their content. These requirements would be set out in a code of practice to deliver on a safety objective to protect children from age-inappropriate content.

FOCUS QUESTIONS

16. What are your views on transferring the current approach of determining illegal material into the new framework?
17. Should the regulator have powers to undertake criminal prosecutions?

Proposed takedown tools to deal with the most harmful content

100. Regardless of who decides whether content is illegal and undertakes prosecutions, there would be roles for the regulator, wider government and platforms to manage that content. In practice, platforms and government would work in tandem to identify illegal or potentially illegal material. Codes would specify the responsibilities on Regulated Platforms when they identify illegal material on their platforms.

101. The regulator would monitor how platforms apply the code to ensure illegal material is identified and removed as soon as possible. This includes:

- through platforms' moderation processes, in accordance with codes
- activating any industry safety measures including voluntary filters
- the regulator issuing takedown notices or seeking service disruption orders.

102. Under the new framework, the following tools would remain available to deal with publicly available illegal material via platforms.

- **Recent law changes created a takedown power enabling the Department of Internal Affairs as the sole agency to issue takedown notices**. This power requires online content hosts to remove, or prevent the New Zealand public having access to, publications that meet that threshold for objectionable content. This power to require takedowns would transfer to the new regulator. The regulator would be able to issue takedown notices without a referral from any other agency. The regulator will not have the power to require takedown of individual pieces of material unless they meet the threshold for being illegal.

- **New Zealand already has a filter in place to prevent access to images of child sexual abuse**. The Digital Child Exploitation Filtering System (DCEFS) blocks websites that host child sexual abuse images and is being made available voluntarily to New Zealand Internet Service Providers (ISPs). While the DCEFS is voluntary, the majority of ISPs in New Zealand use the filter, which means that approximately 92% of New Zealand internet users are protected from child sexual abuse material. The DCEFS block list is constantly reviewed, and the number of URLs blocked at any given time can vary, with numbers ranging from 250 to over 700 URLs.

103. The new system would not include a takedown power for content that does not meet the threshold for being illegal. For example, the takedown of disinformation could be ordered only if it was illegal for other reasons. We are not proposing to widen the kinds of material that would be illegal.

The regulator would have the mandate to explore using similar voluntary filtering systems

104. The regulator would have the mandate to continue to work with industry and the public to explore the use of similar voluntary filtering systems. This would be for other areas of extremely harmful content, such as publications that promote or support violent extremist material, torture, or extreme violence.

105. Any new voluntary filters would continue to apply only to material that's already illegal, or where the material can confidently be deemed illegal. This ensures ISPs are confident that they are not imposing unwarranted restrictions on their customers' access to a free and open internet. They would also need appropriate governance and oversight arrangements to give wider assurance that the operation of the filter was genuinely independent and not subject to bias or overreach.

The regulator should have the power to order a platform to take down illegal material

106. We also propose that the existing takedown powers be extended to material that has been found to be illegal under other New Zealand regimes. For example, under the current regime if someone was convicted of a threat to kill delivered publicly online, the online threat is unlikely to meet the threshold of being 'objectionable' and the current takedown power would be unavailable if a platform chose not to remove it.

107. Similarly, offences under the Harmful Digital Communications Act, such as online bullying and harassment, would likely not meet the current threshold for a takedown notice issued by the Department of Internal Affairs (although the District Court can potentially order a takedown under that legislation).

108. We are interested in your views on:

- the range of illegal material that should be subject to takedown powers – this could be as narrow as criminal offences attracting a certain length of sentence, or as wide as breaches of laws covering consumer protection (for example medical-related advertising) and/or dishonesty (for example, laws against academic cheating)
- whether the takedown power could be exercised (perhaps with the permission of the courts through an injunction), where there is strong evidence but before a conviction has been obtained under the other legislation.

Platforms that fail to comply with takedown notices should also be subject to civil penalties

109. Currently, online content hosts that fail to comply with takedown notices are subject to a civil penalty of up to $200,000 for each incident of non-compliance. Current penalties align with other comparable penalties under the Classification Act. We propose that platforms that fail to comply with takedown notices should also be subject to civil penalties in the first instance. We also propose that financial penalties are revised to reflect the seriousness of non-compliance. This will be determined after consultation on the proposals set out in this document.

110. The proposed penalties for repeated non-compliance with takedown notices, or for wilfully and repeatedly allowing illegal material to be made available on their services, are set out above in the section on persistent non-compliance.

FOCUS QUESTIONS

18. Is the regulator the appropriate body to exercise takedown powers?
19. Should takedown powers be extended to content that is illegal under other New Zealand laws? If so, how wide should this power be?
20. If takedown powers are available for content that is illegal under other New Zealand laws, should an interim takedown be available in advance of a conviction, like an injunction?

Alternative approaches for dealing with the most harmful content

A prescriptive approach:

- Compulsory filters could be put in place to prevent access by customers of New Zealand ISPs to unambiguously objectionable content such as images of children being sexually abused, extreme violence, and bestiality.
- Service disruption for platforms that repeatedly host illegal material and fail to action takedown notices.

Platforms' efforts to improve safety will be supported by education and awareness initiatives

111. A regulatory system is not just about creating new laws – it is about using a range of tools from enforcement through to education, depending on the risk and harm managed, as well as ways to manage and regulate content. As a result, users should have more control over the content they interact with.

Support for content creators, consumers, and communities

112. There will always be content that offends or causes distress to some people in a media and online environment where we are free to express our opinions, and to agree and disagree with each other. To help people navigate that reality safely, we need a coordinated investment approach to building public education and awareness of current and emergent harms, media literacy, and critical thinking skills to identify, avoid, or respond to harmful content. The regulator would encourage, or fund, industry or community-led awareness initiatives, as well as consumer advisories about certain types of content.

113. This could build a foundation to improve and enhance safety and protection measures, and is particularly relevant to reducing risks of low-level harms or aggregate types of harms where no one piece of content justifies management. A key area of focus for education and awareness efforts would be to foster and promote a healthier media and online environment, including enhancing the appropriate exercise of rights to freedom of expression. Non-government organisations would continue to play a key role in this space.

Potential roles and responsibilities under the proposed framework

114. A high-level snapshot of the different players and their roles and responsibilities in this framework, can be found below.

115. We go into more detail about each role in the rest of this section.

A simplified summary of key players' potential roles

The legislative framework would:

- articulate high-level objectives including platform responsibilities to minimise harm, protect children, protect responsible exercise of freedom of speech etc;
- establish the regulator and specify its functions, powers, and responsibilities;
- mandate and specify minimum standards for codes of practice;
- specify offences and penalties

Role of government

- Set safety objectives and policy statements on minimum expectations that codes of practice must achieve
- Undertake criminal and civil prosecutions
- Monitor regulator
- Fund public awareness campaigns
- Deliver curriculum content

Role of regulator

- Support public information and awareness-raising
- Research and monitor harm environment
- Approve and monitor codes of practice
- Issue takedown orders for illegal material and content related to specified criminal offences
- Initiate civil and criminal prosecutions

Platforms

- Required to comply with approved code of practice covering:
  - consumer safety measures
  - complaints process
  - transparency reporting

Sector/industry bodies

- Develop and maintain, codes of practice, code complaints; platform complaint appeals on behalf of members

Educators, training bodies, NGOs

- Deliver critical thinking and media awareness programmes
- Raise general awareness through public information campaigns

Central government agencies would have oversight of the overall system

116. Central government agencies would have two primary functions in the system:

- 'Stewardship' of the overall system (a government department would be responsible for advising on and maintaining the legislation, and monitoring the overall performance of the regulator).
- Investigating and prosecuting for illegal material. Law enforcement agencies would be responsible for this, such as Police, Customs and the Department of Internal Affairs.

The new regulator would oversee the effective operation of the framework

117. The regulator would oversee the effective operation of the new framework. The regulator would:

- approve codes and monitor compliance
- review complaints relating to how platforms implement the codes
- undertake or commission research, investigate content issues, and conduct public information and awareness campaigns
- assess resourcing needs to support awareness initiatives that address current and emerging harms.

118. The regulator would have a host of regulatory powers to monitor and enforce compliance with the codes and regulatory framework.

Māori representation would be built into the regulatory system

119. Strong Māori representation would be built into developing this regulator, to ensure Māori representation and influence are present in all stages of platform regulation. In addition, the regulator would:

- embed Treaty obligations in its governance and mahi
- seek to understand how Māori engage with platforms
- promote tikanga for media and online content.

120. The regulator should also have in-house te ao Māori capacity and capability.

In addition, iwi and Māori would have a role in the governance of the regulator

121. Iwi and Māori would:

- be involved in the governance of the regulator
- have significant input in developing the codes.

Industry and Regulated Platforms would partner with the regulator, community groups, and civil society to develop codes of practice

122. Regulated Platforms would be required to partner with the regulator, community groups, and civil society to develop the codes. They would also:

- moderate content consistently and proactively, and align with legislative standards and desired outcomes
- have the discretion and autonomy to recommend safety measures and processes based on their technical expertise and knowledge
- have to meet New Zealand's expectations, and community, and civil society needs
- implement the codes and ensure their processes were fit for purpose
- investigate and action any complaints they receive about content provided through their services.

Consumers and the public would hold Regulated Platforms to account

123. Consumers and the public have a critical role to play to:

- hold Regulated Platforms to account on how they comply with their code
- help build an evidence base in assessing how well safety measures are working
- make complaints relating to a Regulated Platform's adoption of the code, which would be dealt with by the Regulated Platform in the first instance. This would be similar to the approach under the Broadcasting Act – however, the appeal process will need to be more cost-effective and provide quicker resolutions for both complainants and platforms.

124. In cases where complaints about a Regulated Platform's adoption of its code cannot be resolved directly with the Regulated Platform, complaints can be laid with the regulator. Regulated Platforms would also have to report on all complaints, so that there is regulatory oversight of the full nature and volume of complaints and outcome of those. Sector and industry representative bodies may also have a role in administering complaints mechanisms.

NGOs and civil society will have important roles to play

125. NGOs and civil society will continue to play an important role in a correctly operating framework. Organisations such as Netsafe will continue to help people navigate the new framework, and generally educate people on how to keep themselves safe online. Netsafe would also be an important partner in helping to identify emerging systemic issues for the regulator's attention, as well as supporting the regulator's monitoring and public awareness role.

Some related harmful content will continue to be regulated with specific targeted legislation

126. Our broad definition of content means other regimes will still be relevant, particularly for managing specific pieces of content that could cause a particular type of harm. Some examples are listed below, but the list is not exhaustive.

    - The Harmful Digital Communications Act provides remedies for certain online behaviours, regardless of whether those take place through publicly available content – for example, threatening posts on a public platform, or in private by harassment by private messaging or email. Publicly available content of this nature will also be in the scope of the new framework.
    - Defamatory content – something that is untrue and harmful to someone's reputation would remain subject to the Defamation Act.
    - While advertising generally comes into the new framework, development and enforcement of specific harm minimisation controls, such as advertising restrictions for alcohol, would remain with the current specialist agencies.

Some online harms will remain outside the new framework, like scams and cyber-security breaches

127. The new framework will also reflect that not every harm in the online world is a harm related to people's exposure to content. Some harms will remain outside the new framework – for example, online scams will continue to be treated as fraud, and cyber-security breaches and intellectual property infringements will be considered under their own separate provisions. This does not mean that the codes we're proposing under the new framework will have to be narrowly restricted in scope. For example, codes for social media platforms could cover matters such as bullying or posting content that someone does not have rights to. We also expect non-government organisations supporting New Zealanders to stay safe online to continue to cover the full range of potential online harms.

FOCUS QUESTIONS

21. What do you think about the proposed roles that different players would have in the new framework?

22. Have we identified all key actors with responsibilities within the framework? Are there any additional entities that should be included?

How might the new approach be implemented?

128. New legislation would underpin the framework. This legislation would set out most, if not all, roles and responsibilities in the new framework. A significant transition process will be needed to establish the regulator and transfer the appropriate powers and functions from where they currently sit.

New legislative framework

129. The new legislation would repeal the Classification Act. But it would carry over existing provisions relating to illegal 'objectionable' material. A code-based regime would replace the existing classification regime for legal content. The industry would lead the day-to-day responsibilities of ensuring compliance. This would align with the standards-based approach under the Broadcasting Act.

130. Substantive amendments would also be made to the Broadcasting Act. Existing broadcasting standards and codes would be transitioned into a new regulatory framework over time.

131. The legislation would establish the legal status and accountability of a new regulator and specify its functions, powers, and responsibilities, including accountability and reporting requirements. Regulatory functions would be centralised. The regulator would have a broad mandate to oversee the effective operation of the regulatory framework, supported by clearer monitoring and enforcement powers. Current functions held by existing regulators would likely come into the new regulator.

132. As noted above, more work is needed on appropriate 'last resort' enforcement powers and penalties for persistent or extreme non-compliance. New appeal and review processes would be needed to reflect the shift to a co-regulatory industry regulation approach, and the creation of new civil and (potentially) criminal liabilities. Principles of natural justice, legislative design guidelines, and adherence to the New Zealand Bill of Rights Act will guide further work to determine appropriate pathways for appeals and reviews.

Establishing a new regulator

133. A new independent regulator would need to be established.

134. The regulator's final form, including detailed design of governance and oversight arrangements, would be determined after the regulator's possible functions and roles were decided. Subject to final proposals on the regulator's functions and role, Government would decide appropriate changes to the machinery of government, and funding and resource allocations to establish the new regulator.

135. Under the proposals as they stand, the functions of the Classification Office, Film and Video Labelling Body, and Broadcasting Standards Authority would change considerably.

The Classification Office

136. Classifying material as illegal ('objectionable'): this would likely be transferred to the independent regulator, although we have set out some other options at paragraph 94. A specialist area of the regulator would likely carry out this function, with independence from the regulator's other functions.

137. Consumer advisories and classifying material that is not illegal (labels on DVD cases, movie posters, and commercial video-on-demand): our current system includes both advisory and legally enforceable (Restricted) labelling. Labelling content for age-suitability and imposing any restrictions on supplying age-inappropriate material would be governed by codes and implemented by platforms under the regulator's oversight.

Film and Video Labelling Body

138. The Film and Video Labelling Body provides consumer information and the physical labels on products that support the current classification system. This function would shift into codes and be delivered by platforms.

Broadcasting Standards Authority

139. Supporting and overseeing the development and review of codes for broadcasters: this would transfer to the regulator and would be integrated with the process for developing and maintaining codes for all Regulated Platforms. The regulator would also approve codes.

140. The complaints processes would transfer into the new code system. Regulated Platforms would be required to try and resolve complaints initially, as is currently the case for most professional media. The regulator would provide an independent review process.

The role of existing industry bodies and voluntary codes

141. Under this model we expect that existing industry bodies, such as the Media Council, would still have an ongoing role in functions such as developing codes and running complaints processes.

142. The main area of change will be that existing voluntary codes, such as the Aotearoa New Zealand Code of Practice for Online Safety and Harms, will need to transition into the new framework. Ultimately, the regulator would need to approve them or send them back to industry for necessary changes to bring them into compliance with the new framework. It is likely that some well-established existing codes covering professional content would transition into the new framework with pre-approval, such as existing codes and standards developed by broadcasters and the Broadcasting Standards Authority, and the Media Council and its members. Internal professional editorial processes generally support these codes and standards, significantly reducing the risk of harmful content.

What would the proposed model achieve?

143. A co-regulatory model that places greater responsibility on platforms to improve consumer protection and child safety offers several improvements to the current system.

Providing for Te Tiriti o Waitangi

144. It is important that the new regulatory framework reflects New Zealand's unique cultural and social perspectives, and that it is grounded in Te Tiriti o Waitangi. The new regulatory framework would aim to achieve outcomes that reflect Māori perspectives, needs, and aspirations.

The regulator could be required to have a significant Māori presence on its Board

145. We expect the legislation to provide for rangatiratanga by requiring a significant Māori presence on the Board of the regulator. For example, more than one member could be required to have knowledge of tikanga Māori, how content risks affect Māori, or both. The Board oversees the regulator's activities and sets its strategic direction and priorities.

146. The regulator may also wish to explore whether it needs a formal Māori advisory structure to support its work at the more operational level. The regulator would also need enough resources to keep in-house capacity and understanding of te ao Māori to inform its operational processes and decision-making.

The regulator could fund education for Māori and use tikanga Māori processes

147. Other opportunities for partnership and Māori participation in the new framework would include:

- the regulator funding education initiatives that would be by Māori, for Māori (for example, initiatives to address harms faced by kaumātua, wāhine, rangatahi and tamariki that are led and shaped by iwi and community leaders or organisations)
- building tikanga Māori conflict-resolution and problem-solving processes into the regulator's engagement with the community and the process for approving codes.

The regulator could involve Māori in creating codes of practice

148. Developing, approving, and implementing codes of practice in the new framework will be a key element in providing for the Treaty principle of active protection. The functions and powers of the regulator for developing codes could include:

- an ability to specify requirements for Regulated Platforms to involve Māori in developing and implementing codes
- setting minimum standards to be met in codes for cultural competency in moderation processes
- verifying that complaints processes under codes are respectful of and restore mana between parties through tailored remediation processes that are mindful of cultural values.

The Crown must protect the rights of Māori to express themselves freely

149. The positive aspects of increased access to content, and the ability to generate and share content, have also benefited Māori. The Crown must continue to actively protect the rights of Māori to express themselves freely and to generate and share content, especially to protect and support te reo me ōna tikanga.

Kāwanatanga is an important aspect of the proposals

150. Regulating platforms has a strong international dimension, and the new framework needs to be compatible with those in like-minded nations. A central point of regulation is needed to effectively deliver the system.

151. As the new framework would be an industry regulation model, there is little scope for a separate Māori entity. There would, however, be scope for kaupapa Māori platforms (for example, Whakaata Māori or iwi radio stations) to develop their own codes of practice. These codes would comply with the overall framework but take a te ao Māori perspective to managing safety.

We will work to incorporate Treaty provisions into the legislation and regulator

152. A further stage of work will look at how this should all translate into specific Treaty provisions in the legislation and the regulator's institutional design. While we have proposed a highly independent regulator, there would still be powers for Parliament to set high-level expectations for its performance in upholding Te Tiriti.

FOCUS QUESTIONS

23. What do you think about how we're proposing to provide for Te Tiriti o Waitangi through this mahi? Can you think of a more effective way of doing so?
24. Do you think that our proposals will sufficiently address harms experienced by Māori?

Upholding rights and a free press

153. Focusing on consumer rights under this framework supports consumer choice. This should support users to create, share and consume content while fully informed about the safety measures a service has in place. This will uphold freedom of expression. Additional safety measures may further enhance freedom of expression for those who are unable to participate fully on social media because of the level of harassment they currently experience.

154. We expect freedom of the press will be preserved, as the regulator would have no powers to interfere in editorial control. News media could develop their own code under this proposal, like the current standards that apply to those platforms. They will also continue to consider complaints for breaches of their code in the first instance, so they can correct errors and address issues raised by complainants about their content and conduct.

Increased certainty, consistency, and flexibility

155. A key purpose of the Review is to ensure the framework is flexible so it can respond to existing harms, as well as emerging harms as they arise. Consumers should be able to safely interact with content and be reassured that appropriate protection measures are consistent and enforced to the same standard across platforms. Platforms also need to be certain about their compliance obligations. The new system would enable New Zealand to keep up with international developments, and New Zealanders would get the same protections from harm as those living in other countries with regulatory requirements.

156. The new framework would provide greater flexibility to platforms to innovate and evolve their processes to best meet their regulatory obligations. It would also enable government to tailor consumer safety measures and requirements according to the risk posed by different types of platforms.

More clarity for platforms, and a more flexible, equitable regulatory approach

157. Our current system does not clearly outline expectations for user-generated content or provide accessible support for it. A consistent approach across Regulated Platforms will help reduce confusion and disjointed regulatory approaches. Regulated Platforms would be required to report on their progress in meeting and maintaining minimum standards and safety enhancement measures. These measures would apply to traditional and emerging Regulated Platforms, including mainstream media broadcasters, social media platforms and user-generated content. The proposed approach would more clearly outline what is expected of users who choose to generate content.

FOCUS QUESTIONS

25. What do you think about how rights and press freedoms are upheld under the proposed framework?

26. Do you think that our proposals sufficiently ensure a flexible approach? Can you think of other ways to balance certainty, consistency, and flexibility in the framework?

How might this all come together in practice?

Example 1: Content promoting dangerous disordered eating

158. Alongside growing use of social media platforms, we have seen an increase in content that promotes dangerous disordered eating habits. Recommendation systems have promoted this content to vulnerable users. This content can have devastating impacts on their physical and mental wellbeing and often encourages self-harm. Content like this can be especially harmful to young people.

What user support would be available?

Users could access industry or government-provided safety information so they can decide whether they want to see that content or not

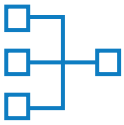
Government could support education initiatives for the public, through stand-alone activities or through the school curriculum, about the risks from content that promotes disordered eating, how best to keep safe, and how to support those suffering from an eating disorder

Education for creators about the risks involved in creating content that promotes disordered eating

What could users expect to see from Regulated Platforms?

Restricted promotion of content encouraging disordered eating behaviours to children and young people. The regulator would oversee platforms' compliance with this

More consistent application of platforms' terms of service. Platforms would also have to resolve complaints about this harmful material if it was not allowed



Proactive mitigation strategies to reduce the risks from material that promotes dangerous disordered eating. For example, stronger recommendation systems and algorithms

A prescriptive alternative (not recommended under these proposals):

The Government could restrict access to content that promotes serious injury to a person. This could mean that platforms would be required by law to block access to this content. We are not recommending this type of response.

Example 2: Adult content in video games

159. New Zealanders are becoming increasingly concerned about the impact of adult content on children and young people. This includes violence and violent sexual content. This can negatively impact children and young people, especially if they are underage or unprepared, by affecting their immediate emotional wellbeing and mental health, their attitudes about suicide, sex and relationships, and long-term wellbeing. As virtual reality, use of avatars and haptic technology, and media production technologies continue to develop, the realistic and often graphic nature of this content is also likely to advance.

160. With ready access to internet content, it can be hard to keep kids safe online, but there are ways the system can respond to reduce current harms from adult content on young people.

What user support would be available?

Users would have access to safety information to decide whether they want to access this content or not. This could include content warnings or better player controls.

Government would educate the public about adult content risks and how best to keep safe. It could also support industry initiatives to improve online safety tools for users.

Parents and caregivers would have access to information about risks of R18 video games for younger players.

What could users expect to see from Regulated Platforms?

Users could see platforms more proactively managing content and access for vulnerable groups like young people. This might look like age verification requirements and content warnings

Innovative content moderation practices by platforms could identify unsafe content as soon as possible

The regulator could oversee industry compliance with minimum standards, codes of practice, or both. Platforms would therefore be held accountable for the content they provide access to

Where would Government get involved?

The Government would continue to ban and criminalise the possession of illegal material, such as films and video games encouraging torture and extreme violence against others

Example 3: Violent misogynistic content

161. The internet's size and accessibility has made it easier to create and spread harmful content that targets specific groups of people – for example, violent misogynistic threats online. This affects not only the women who are targeted, but also their whānau and wider community's sense of safety and wellbeing.

What could users expect to see from Regulated Platforms?

Greater use of warnings or consumer advisory information could help users to make informed decisions before viewing this harmful content

Platforms could be required through codes to have robust tools, like targeted moderation practices, to reduce the prevalence of this content. This would include down-ranking, or that this content is shown alongside counter perspectives

Users would have better pathways for reporting harmful content, along with flagging by artificial intelligence

Platforms could have early intervention systems that detect and warn users of the harm from this content before it is posted or shared

Platforms could be required to take action against users that have breached their terms of service

Some platforms may need to remove this content if it poses a risk to their user group, for example, where they have a large number of young users

What user support would be available?

Government could provide education through stand-alone awareness campaigns or funding awareness initiatives by NGOs. This would be done to promote greater understanding within communities about misogynistic content and behaviours online that can cause harm to others. The education system would support raising awareness of these issues among our young people

Where would Government get involved?

Violent misogynistic content that describes, depicts, or expresses matters in such a way as to be deemed 'illegal' material (that is in line with the current threshold for 'objectionable' material) would be removed and may be subject to a takedown notice.

For example, content might be 'objectionable' if it includes the use of violence or coercion to compel a person to participate in, or submit to, sexual conduct

Appendix A: Understanding our current content and media environment

Content is an integral part of our lives

1. Content creation and consumption are completely integrated into our lives. For many New Zealanders, our digital and physical lives are closely connected, and the internet is an accepted part of everyday life. Content and media allow people to connect, communicate, entertain, and educate. New Zealand is committed to freedom of expression, so it is important that New Zealanders can continue to create and share content and access the content and services they value. Our access to media and content connects people and communities and has given people a voice and a platform to share what is important to them.

The way we consume content and interact online is evolving

2. The media used to be made up of television and radio broadcasters, book and news publishers, advertisers and cinemas. A small number of identifiable organisations in the media industry controlled the creation and distribution of most content, and the delivery of content to the consumer was also controlled. It was a lot easier to see what content was being created, and it was possible to put rules in place to keep people safe from unsafe or dangerous content.

3. On the other hand, much less content was available that represented minority perspectives. Delivery of information was often slow, and access to it could be difficult – for example, some information was only available in certain formats or locations. Over time we have seen increases in the diversity of content such as more material in te reo Māori, inclusion of rainbow perspectives and the expansion of cultural identity that reflects New Zealand societies.

The internet has removed barriers to how content is created, distributed and accessed

4. Nowadays the internet has lowered, or in some cases completely removed, barriers to how content is created, distributed and accessed. Significantly more content is being created today than ever before, and people can directly access much of this without publishers or editors. It is estimated that 2.5 quintillion bytes of data are created every day – that is 2.5 with 17 zeroes after it.

5. Continuous technological developments have also led to ‘convergence’, a word used to describe the coming together of separate media technologies. Previously, New Zealanders would need to access specific types of content through different devices and mediums. Today, this can be done on a single device, such as a smartphone or computer. For example, the 6pm news can now be watched and listened to live over a broadcast, live-streamed, watched on-demand on multiple platforms, or embedded into a webpage containing other information.

6. Convergence has many benefits. For example, creators can share content more easily, and consumers can access a greater range of local and international content.

7. However, the ongoing evolution of digital media and the rise of new content platforms has resulted in a significantly increased risk for New Zealanders to experience unsafe content. In some cases, this growth in content types and services means that risky content is more easily amplified and can have a greater impact on the wellbeing of individuals and communities.

Our current regulatory system focuses on a small number of media types, and it hasn’t adapted to new technologies and the way New Zealanders use them

8. News media and journalism have always had an important role as the fourth estate, serving as a check on government. Convergence has made it easier for a wider range of people to perform journalistic functions, for example bloggers and citizen journalists. It has increased opportunities for political and social debate and the contest of ideas. Minorities or groups who weren’t previously given a voice now have the ability to give their perspective on a variety of issues.

9. New Zealand’s current regulatory model for news media content reflects this and is structured to protect and balance principles like freedom of the press and important rights such as freedom of expression. For example, press codes, such as the four codes developed by the Broadcasting Standards Authority, focus on the practice of ethical journalism in matters such as intrusion into privacy and accuracy of information. These are a subset of the wider standards that apply to all broadcasting entities.

Our existing laws, rules and processes do not do a good job of covering online platforms

10. It is important that the new framework protects important principles and rights. However, we know that in most instances our existing laws, rules and processes do not do a good job of covering online platforms – our laws were enacted just as the internet was starting to take off. For example, the Broadcasting Act 1989 is an industry regulation model that sets standards for broadcasters and sets up a complaints process to deal with breaches of those standards, including standards for consumer advisory information. The Films, Videos, and Publications Classification Act 1993 has a different consumer advisory system for age suitability and warnings for content in films. It also specifies what publications are illegal in New Zealand – which is called 'objectionable' material.

11. Compartmentalising our regulatory system around definitions like 'broadcaster', 'film' and 'publication' no longer makes sense. It takes away the flexibility we need to respond to the many types of content we interact with today, including the many different types of content and platforms available online. It has also resulted in a lot of organisational fragmentation. Several different organisations have a role in delivering the existing systems: the Broadcasting Standards Authority for the Broadcasting Act, and the Office of Film and Literature Classification, Department of Internal Affairs, and Film and Video Labelling Body for the Classification Act.

Gaps in our regulations impact social media policies and systems to manage risks from content

12. Our regulations have major gaps because the way that New Zealanders consume content, and the types of content they consume, has changed so much since the regulatory system was created.

13. Our laws are also not as joined up as they could be, leading to overlaps in how we regulate some kinds of platforms and gaps in others. For example, most content on social media is not regulated consistently in New Zealand. Many platforms have extensive moderation, policies and systems to manage unsafe content, but the consistency and effectiveness of these efforts is not directly overseen by any regulatory authority in New Zealand.

14. More content is consumed outside the proactive protective systems we have in place for more traditional content types, making it more likely for New Zealanders to interact with unsafe or harmful content. It has also become harder for people to make informed choices about what content is right for them and their dependants. New Zealanders are experiencing a wide range of harms that our existing measures and safeguards are unable to deal with.

Online platforms need to come into the regulatory model

15. Governments as well as online and technology platforms are widely acknowledging the need to regulate online platforms. We need regulation because platforms are not always incentivised by the current system to focus on an investment to reduce the risks of unsafe content. There are public concerns about the transparency and performance of the algorithms and other systems that social media companies use to direct content to users.

16. The largely self-regulated nature of online platforms means people are more vulnerable to being exposed to unsafe content and experience inconsistent treatment when harm does occur. Unlike conventional broadcasters, online and social platforms are not limited by a single agreed code of standards, ethics and rules.

A consistent international approach is important

17. Addressing unsafe or harmful content and the global services distributing it requires a collaborative global effort. We're not alone in trying to protect our people from the risks of content online. Several other international jurisdictions are grappling with outdated content regulatory systems that do not have the flexibility to respond to new forms of media and the risk of harm they pose.

18. Comparable international counterparts, such as the European Union, United Kingdom, Australia, Ireland and Canada, have similar judicial and harm environments to New Zealand. They have all acknowledged that industry self-regulation for online platforms is insufficient and the need to move towards increasing government's role in regulating online platforms, particularly through co-regulatory arrangements.

19. Compliance is also likely to be higher if global platforms face similar regulatory requirements across many countries and can engineer their systems to meet common compliance requirements.

20. The actions taken, or proposed, in other countries include requirements such as more proactive moderation and designing for safety, transparency reporting and takedown notices. For communities and civil society, proposed levers include designing accessible processes to challenge decisions to restrict access or remove content by platforms. There is also a trend towards combining regulator power into one single government entity.

21. Our proposed approach is broadly aligned with these overseas examples. A more detailed comparison is in Appendix D.

Industry is shifting to a code-based approach to reduce unsafe content

22. Internationally, technology and social media platforms have progressively shifted to an industry code-based approach to moderating unsafe content. Industry self-regulation examples include the EU Code of Practice on Disinformation, the EU Code of Conduct on Countering Illegal Hate Speech Online, the Australian Code of Practice on Disinformation and Misinformation, and the Digital Trust & Safety Partnership Best Practice Framework.

23. In July 2022, Meta, Google, TikTok, Amazon and Twitter signed up to the voluntary Aotearoa New Zealand Code of Practice for Online Safety and Harms alongside Netsafe and NZTech, to actively reduce content risks on their platforms. However, voluntary efforts are most effective when they are backed by regulation, as global social media companies are more likely to comply if regulatory requirements are similar across many countries. Backing up voluntary approaches with regulation also brings industry up to the same standard.

24. Relying on a code-based approach is a well-established feature of New Zealand's regulatory approach for traditional media. For example, various industry bodies such as the Media Council set out professional standards and principles, noting the expected level of behaviour from their members.

This work complements other related government initiatives

25. Safer Online Services and Media Platforms (formerly the Content Regulatory Review) is part of a broader suite of government initiatives to protect New Zealanders from harmful content and strengthen social cohesion.

26. Following the 15 March 2019 terrorist attacks, the New Zealand and French Governments brought together heads of state, governments and leaders from the tech sector to adopt the Christchurch Call (the Call). The Call is a commitment by governments and technology companies to eliminate terrorist and violent extremist content online, while upholding the right to freedom of expression.

27. The New Zealand Government also announced a Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 to examine, among other things, what measures agencies should take to prevent future terrorist attacks. The Royal Commission report was released in December 2020 and made 44 recommendations, covering both national security and wider social and community matters.

Other government initiatives that address online harm

28. In response, the Government has a number of initiatives under way that either directly implement the Inquiry's recommendations or support a broader government response to addressing online harm.

29. These include:

- the recent launch of Te Korowai Whetū Social Cohesion, which is a package of tools and resources to support New Zealanders' collective social cohesion efforts
- a referral to the Te Aka Matua o te Ture | Law Commission to undertake a review of legal responses to hate
- proposed changes to the education curriculum and wider education initiatives aimed at improving New Zealanders' understanding of ethnic, cultural and religious diversity as well as building emotional and social resilience
- establishing New Zealand Police's Te Raranga programme – this is a victim-centric approach to hate crime, aiming to develop resources that make it easier for victims and their families to report hate crime, public education to prevent hate crimes, and improvements to the Police's systems, processes and frontline practices to identify, record, manage and respond to hate crime.
- the recent amendment to the Harmful Digital Communications Act 2015 to explicitly include non-consensual intimate visual recordings.

Appendix B: The objective and principles guiding this work

The objective of this review of New Zealand's regulatory system for media and online platforms is to enhance protection for New Zealanders by reducing their exposure to harmful content, regardless of delivery method. The aim is to provide better protection for vulnerable groups and achieve better consumer protection for all New Zealanders.

The guiding principles

- Responsibilities to ensure a safe and inclusive content environment should be allocated between individuals, platforms, and government.
- Individuals should be empowered to keep themselves safe from harm when interacting with content on platforms.
- Platforms should have responsibilities for minimising harms arising from content on their services.
- Government responses to protect individuals should be considered appropriate where the exercise of individual or corporate responsibility cannot be sufficient. For example:
    - where there is insufficient information available to consumers about the risk of harm
    - where individuals are unable to control exposure to unsafe content
    - where there is an unacceptable risk of harm because of the nature of the platform and/or the circumstances of the interaction (for example, children being harmed by content interactions).

Interventions should be reasonable and able to be demonstrably justified in a free and democratic society. This includes:

- Freedom of expression should be constrained only where, and to the extent, necessary to avoid greater harm to society.
- The freedom of the press should be protected.

The impacts of regulations and compliance measures should be proportionate to the risk of harm. Interventions should be adaptive and responsive to:

- changes in technology and media
- emerging harms, and changes to the scale and severity of existing harms
- future changes in societal values and expectations.

Interventions should be appropriate to the social and cultural needs of all New Zealanders and, in particular, should be consistent with:

- government obligations flowing from Te Tiriti o Waitangi
- recognition of and respect for te ao Māori and tikanga.

Interventions should be designed to maximise opportunities for international coordination and cooperation.

Appendix C: New Zealand's Rights Framework

30. New Zealand's rights framework is made up of statutes, documents, practices, conventions and institutions, including the New Zealand Bill of Rights Act 1990, Human Rights Act 1993, and Te Tiriti o Waitangi.

31. All legislative decisions are checked for consistency with the Bill of Rights Act 1990, Human Rights Act 1993, and Te Tiriti o Waitangi before they are introduced into Parliament.

32. Safer Online Services and Media Platforms seeks to ensure that freedom of expression is balanced with other human rights such as non-discrimination, security, and democratic rights, and that all people, from consumers to creators and publishers, have equitable opportunities and do not suffer unfair treatment. The proposals to carry out the objective must be consistent with the Human Rights Act and Bill of Rights Act.

The New Zealand Bill of Rights Act

33. The New Zealand Bill of Rights Act 1990 protects the civil and political rights of all New Zealanders. The Act covers defined categories of rights and freedoms, including freedom of expression, non-discrimination and protecting minority rights. You can find a full list of rights and freedoms the Act encompasses at: The New Zealand Bill of Rights Act | New Zealand Ministry of Justice

34. The rights set out in the Bill of Rights Act can be subject to limitations, provided these limitations are lawful, necessary and proportionate. For example, an individual's right to freely express themselves can be limited to protect people from unsafe content, particularly children and young people. This balance between freedom of expression and consumer safety is central to this work.

35. The Bill of Rights Act applies to acts done by the Government or someone exercising a public function. This means that an individual cannot use it to bring an action directly against another private individual or body who may have harmed them, as might occur in an online environment. However, these instances are covered by the Human Rights Act 1993, discussed below.

The Human Rights Act

36. The Human Rights Act 1993 aims to give all people equal opportunities and prevent unfair treatment based on irrelevant personal characteristics. This includes characteristics such as sex, religious belief, colour, race, disability, age, and sexual orientation. You can find a full list at:
The Human Rights Act | New Zealand Ministry of Justice

37. Under the Human Rights Act, it is unlawful to discriminate against someone on these grounds in public life, including employment, education, access to public places, providing goods and services, and housing and accommodation.

38. The Human Rights Act also has provisions aimed at promoting racial harmony and preventing discrimination in the form of racist speech. These provisions must be interpreted in light of the right to freedom of expression and so they have a high threshold. Unlike the Bill of Rights Act, the Human Rights Act can also apply to private individuals and entities.

Appendix D: Features of comparable international frameworks

Features of proposed regulatory framework	New Zealand's current system	The proposals in this document	EU's Digital Safety Act 2022 (DSA)	Australia's Online Safety Act 2021	Canada's Online Harm Legislation (proposed)	Ireland's Online Safety and Media Regulation Act 2022	UK's draft Online Safety Bill (proposed)
Consolidating regulatory power for content safety	Multiple regulators in the media content system, including multiple regulators for online content.	One primary regulator for both traditional and online content.	One primary regulator for platforms reaching more than 45 million users. Other platforms managed by member states where established.	Multiple regulators in the media content regulatory system. One primary regulator for online content.	Multiple regulators in the media content regulatory system. One primary regulator for online content.	One primary regulator for both traditional and online content.	One primary regulator for both traditional and online content.
Regulatory model	Government and self-regulatory models within the online content regulatory system.	Industry codes to be developed collaboratively and approved by regulator.	Individual member governments responsible for developing regulatory models that align with the DSA.	Co-regulatory model. Industry develops codes, government has oversight and can step in if codes are ineffective or insufficient.	Government regulatory model.	Mostly government regulatory model with co-regulatory aspects. Principles-based codes, which industry determines how to implement.	Mostly government regulatory model with co-regulatory aspects. Principles-based codes, which industry determines how to implement.

Features of proposed regulatory framework	New Zealand's current system	The proposals in this document	EU's Digital Safety Act 2022 (DSA)	Australia's Online Safety Act 2021	Canada's Online Harm Legislation (proposed)	Ireland's Online Safety and Media Regulation Act 2022	UK's draft Online Safety Bill (proposed)
Transparency requirements for online content providers	No	Yes	Yes	Yes	Yes	Yes	Yes
Complaints and redress processes for restriction or removal of online content	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Blocking and take-down notices	For specific cases, takedown notices can be issued.	For specific cases, takedown notices can be issued.	For specific cases, takedown notices can be issued.	For specific cases, at the discretion of the regulator.	For specific cases, at the discretion of the regulator.	For specific cases, requires a court order to have content blocked.	For specific cases the regulator can issue warnings, but requires a court order to have content blocked.

Features of proposed regulatory framework	New Zealand's current system	The proposals in this document	EU's Digital Safety Act 2022 (DSA)	Australia's Online Safety Act 2021	Canada's Online Harm Legislation (proposed)	Ireland's Online Safety and Media Regulation Act 2022	UK's draft Online Safety Bill (proposed)
Interventions to address non-compliance by MSPs	No	Fines, court awarded powers to disrupt services provided to seriously non-compliant platforms.	Fines, judicial and/or administrative takedown and disclosure orders.	Infringement notices, enforceable undertakings and injunctions.	Fines and administrative monetary penalties.	Fines and administrative financial sanctions.	Fines, court awarded powers to disrupt services provided to non-compliant platforms.
Progress toward new regulatory framework			Came into effect on 20 December 2022	Came into effect 21 January 2022	Considerable public consultation has been undertaken and proposed online harms legislation is expected to be introduced in the near future.	Came into effect on 15 March 2023.	The Bill has passed through the House of Commons, with some provisions being strengthened, and is currently being considered by the House of Lords.