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Hon Jan Tinetti, Minister OF Internal Affairs

Proactive release of Cabinet material about the initiation of the media content regulatory review
2 July 2021

These documents have been proactively released:

19 May 2021 SWC-21-MIN-0072 Minute: Initiating a Broad Review of the New Zealand Media Content Regulatory System;

24 May 2021, CAB-21-MIN-0179 Minute: Report of the Cabinet Social Wellbeing Committee;

24 May 2021, Cabinet Paper: Initiating a Broad Review of the New Zealand Media Content Regulatory System;

10 February 2021, Briefing: The Department's recommended approach to a review of the media content regulatory system; and

19 February 2021, Briefing: International proposals for comprehensive online content regulatory frameworks.

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Where information has been withheld for other reasons consistent with advice, it has been annotated with an asterisk. This information may in some cases be accessible under the Official Information Act 1982.

Key to Redaction Codes:

- **Section 9(2)(g)(i) - free and frank**
- **Section 9(2)(f)(iv) – the confidentiality of advice tendered by Ministers of the Crown and officials**

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Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Initiating a Broad Review of the New Zealand Media Content Regulatory System

Portfolio Internal Affairs

On 19 May 2021, the Cabinet Social Wellbeing Committee (SWC):

- 1 **noted** that in 2019, SWC invited the Minister of Internal Affairs and Minister for Broadcasting, Communications and Digital Media to report back to Cabinet on the proposed Terms of Reference, engagement approach and timeline for a review of the media content regulation system and noted that the regulation of content on social media would likely fall within scope of the review [SWC-19-MIN-0133];
- 2 **noted** that the existing media content regulatory system is not capable of adapting to changes in the way individuals rely on and interact with media content, resulting in unmitigated harms;
- 3 **noted** that the Films, Videos, and Publications Classification Act 1993 (the Classification Act), the Broadcasting Act 1989 (the Broadcasting Act) and Harmful Digital Communications Act 2015 all aim to reduce harm from media content, but all have shortfalls and there is no consistent or integrated regulatory approach;
- 4 **agreed** to a harm-minimisation focused media content regulatory system review (the review), led by the Minister of Internal Affairs with the Department of Internal Affairs as lead agency;
- 5 **noted** that the harm-minimisation objectives of the review will need to be balanced with other fundamental human rights, including freedom of expression;
- 6 9(2)(f)(iv) [REDACTED]
- 7 **noted** that the Minister of Internal Affairs will consult closely with the Minister for Broadcasting and Media as the review progresses, to manage any issues that directly impact on the Broadcasting Act;
- 8 **noted** that the review will likely include matters relevant to other government workstreams and to the recommendations of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019;
- 9 **agreed** to Department of Internal Affairs officials carrying out targeted stakeholder engagement on high-level regulatory design options, with the support of Ministry for Culture and Heritage officials;

10 **agreed** in principle to the guiding principles for the review, attached as Appendix A to the submission under SWC-21-SUB-0072, subject to their review and confirmation as part of the terms of reference;

11 9(2)(f)(iv)

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Peeni Henare
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Office of the SWC Chair
Officials Committee for SWC

Proactively released by the
Minister of Internal Affairs



Cabinet

Minute of Decision

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Report of the Cabinet Social Wellbeing Committee: Period Ended 21 May 2021

On 24 May 2021, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 21 May 2021:

Out of scope

SWC-21-MIN-0072 **Initiating a Broad Review of the New Zealand Media Content Regulatory System** CONFIRMED
Portfolio: Internal Affairs

Out of scope

Michael Webster
Secretary of the Cabinet

Office of the Minister of Internal Affairs

Chair

Cabinet Social Wellbeing Committee

Initiating a broad review of the New Zealand media content regulatory system

Proposal

1. This paper seeks agreement to initiate a broad review of New Zealand's media content regulatory system, led by the Department of Internal Affairs (DIA), and for DIA to engage with targeted stakeholders on the scope of the review.

Relation to government priorities

2. A broad, harm minimisation-focused review of New Zealand's media content regulatory system will contribute to the Government's priority of supporting a socially cohesive New Zealand, in which all people feel safe, have equal access to opportunities and have their human rights protected, including the rights to freedom from discrimination and freedom of expression.

Executive summary

3. The paper follows a Cabinet report-back invitation to the previous Minister of Internal Affairs and the Minister for Broadcasting, Communications and Digital Media, on the Terms of Reference, engagement approach and timeline of the proposed media content regulatory review [SWC-19-MIN-0133 refers].
4. *Media content* or *content* is defined in this Cabinet paper as any communicated material (for example video, audio, images and text made publicly available, regardless of how it is communicated). The term *media channels* refers to how media content is made available (for example broadcasts, published material, and online platforms). These concepts will continue to be refined as the scope of the review is discussed with stakeholders.
5. Media content in New Zealand is currently regulated under several regulatory frameworks that have largely developed independently of each other. These frameworks do not have the capability to respond effectively to new forms of harm and technology changes. A broad review of the media content regulatory system has been considered by Ministers since 2008 but has never been undertaken. Instead piecemeal amendments to different frameworks within the system have been made to address discrete problems and gaps.

6. The ongoing evolution of digital media has resulted in significant and growing potential for New Zealanders to be exposed to harmful media content. Our existing regulatory frameworks are based around the media channel or format by which content is made available and do not cover many digital media channels. This model does not reflect a contemporary approach where the same content is disseminated across many channels simultaneously. As a result, it provides protection for a decreasing proportion of media content that New Zealanders experience. This means that New Zealanders are now more easily and frequently exposed to content they might otherwise choose to avoid, including content that may pose harm to themselves, others, and society at large.
7. To minimise the growing risk of harm to individuals, society and institutions from media content, media content regulations need to move away from primarily focusing on traditional forms of media, and expand to comprehensively cover the majority of content that New Zealanders consume. Additionally, regulatory arrangements need to be more cohesive to avoid overlaps and inconsistencies and reduce confusion for regulated groups and consumers.
8. Internationally, other jurisdictions are addressing similar problems with media content regulatory systems that do not have the flexibility to respond to new forms of media and the risk of harm they pose. In response, there are a range of initiatives in different jurisdictions to modernise media content regulatory systems to mitigate the risk of harm posed by online media content.
9. I propose that I lead a harm-minimisation focused review of content regulation. This review will aim to create a new modern, flexible and coherent regulatory framework to mitigate the harmful impacts of media content, regardless of how it is delivered. The framework will still need to protect and enhance important democratic freedoms, including freedom of expression and freedom of the press. The threshold for justifying limitations on freedom of expression will remain appropriately high.
10. I expect the development of this framework to consider the full spectrum of non-regulatory and regulatory interventions, from public education through best practice and self-regulation to more prescriptive regulatory approaches and legal sanctions to manage risks of serious harm.
11. The review will complement work across Government in response to the March 2019 Christchurch terrorist attack, including the Christchurch Call and responding to the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain.
12. This paper seeks agreement to initiate the proposed media content regulatory review, and for DIA officials, with the support of the Ministry for Culture and Heritage (MCH), to carry out targeted engagement on scope determination. It also seeks an invitation to report back to Cabinet, prior to public engagement on options, on the proposed options for reform, a public engagement plan and public consultation document for the review, following targeted stakeholder engagement.
13. 9(2)(f)(iv) [REDACTED]

Background

14. New Zealand's current media content regulatory system is comprised of:

- 14.1 the Films, Videos, and Publications Classification Act 1993 (the Classification Act), which labels and, in some cases, restricts the availability of harmful content delivered on specified media channels;
 - 14.2 the Broadcasting Act 1989, which establishes the Broadcasting Standards Authority, which requires broadcast content to meet certain standards¹ that balance harm-minimisation objectives with freedom of expression and provides a complaints process; and
 - 14.3 voluntary self-regulation, which includes the Media Council and Advertising Standards Authority.
15. Additionally, there are several other regulatory arrangements that sit parallel to the media content regulatory system. For example:
- 15.1 the Harmful Digital Communications Act 2015, which regulates online communication, as defined in the Act's communication principles; and
 - 15.2 the Unsolicited Electronic Messages Act 2007, which prohibits unsolicited commercial electronic messages with a New Zealand link from being sent.
16. Our existing regulatory system is not capable of adapting to changes in the way individuals rely on and interact with media content, resulting in unmitigated harms.

The current regulatory system is not equipped to respond to the growing risk of harm from recent and emerging media channels

17. Many of the harms the current system is unable to respond to are coming from contemporary digital media content, for example social media. The internet has decentralised the production and dissemination of media content, and a significant and growing proportion of media content is now not clearly captured by the regulatory system. Before the internet was widely used, New Zealanders predominantly consumed media through television, radio, cinemas, DVDs and print channels. These channels are subject to regulatory requirements concerning which content is deemed acceptable, at which time, and for which audience. Both the Classification Act and the Broadcasting Act are examples of this approach.
18. Prior to the widespread use of the internet, New Zealanders were also typically informed of the potential harm posed by media content before they experienced it. For example, while in the year 1990 consumers were informed of the classification rating of video content by the video's front cover, a consumer could view the same content today on social media platforms without being informed of the risk of harm posed by that video content. Consumers today are therefore less able to avoid media content that would be harmful to them, and parents are less able to protect their children from experiencing age-inappropriate content.
19. People have different degrees of vulnerability to this content, meaning some people will not be directly harmed from consuming the same content that might harm others. When people engage with content that they are vulnerable to, this can drive behaviour that harms themselves and others in both the online and offline worlds.
20. Specific types of harmful media content that are affecting New Zealanders includes:
- 20.1 adult content that children can access, for example online pornography, explicit language, violent and sexually explicit content;

¹ Including the observance of good taste and decency, the maintenance of law and order; and the privacy of the individual.

- 20.2 violent extremist content, including material showing or promoting terrorism;
 - 20.3 child sexual exploitation material;
 - 20.4 disclosure of personal information that threatens someone's privacy, promotion of self-harm;
 - 20.5 mis/disinformation;
 - 20.6 unwanted digital communication;
 - 20.7 racism and other discriminatory content; and
 - 20.8 hate speech.
21. There are existing regulatory frameworks that lie outside of the media content regulatory system which apply to some of these types of content, for example the Privacy Act 2020 and the role of the Privacy Commissioner², and the Terrorism Suppression Act 1992³. However, these existing regulatory frameworks are not able to respond to these harms as comprehensively and effectively as the scale and severity of these harms warrant.
22. The increase in the potential for New Zealanders to be exposed to harmful content is compounded by the complexity of the piecemeal regulatory system. The existing regulators in the media sector have filled some of the gaps in the media content regulatory system. However, this has resulted in fragmented and incomplete coverage in the media content regulatory system, which has resulted in complicated regulatory arrangements for content across media channels. Disaggregated regimes, and the shift to deliver the same content across many channels, has resulted in a new problem where the appropriateness of the same or similar content is given a different determination under the different regimes. This increases difficulty for New Zealanders in deciding what content is appropriate for them and their children. There are also broader societal concerns about the potential implications of inconsistent regulation or industry self-regulation of content on the right to freedom of expression.
23. Disaggregation has also resulted in confusion for consumers on how to report harmful content. Consumers must go to different regulators depending on the media channel the content was viewed on. This has created confusion for consumers, media content providers and legal uncertainty for regulators.
24. There have been attempts to undertake broad reviews to respond to issues with the media content regulatory system since 2008. This has meant that work in this area has been reactive and limited to addressing specific issues or "gaps" identified in the system, as they become priorities. The regime needs to be fundamentally transformed to cohesively cover digital, analogue and physical media content.

² The Privacy Act 2020 governs how individuals, organisations and businesses collect, use, disclose, store and give access to personal information.

³ The Terrorism Suppression Act 2002 includes an offence relating to recruiting members of terrorist groups, which can take place online.

There is movement internationally to more comprehensively regulate online content

25. Other governments are also grappling with outdated media content regulatory systems that do not have the flexibility to respond to new forms of media and the risk of harm they pose. Recently, there has been a number of international proposals to develop new comprehensive regulatory frameworks for online content, particularly across Europe. There is opportunity for New Zealand to draw lessons from these international initiatives and consider aligning regulatory proposals for online content for greater efficiency and effectiveness of regulation.

Previous consideration of a review of the media content regulatory system

26. In February 2019, the previous Minister of Internal Affairs and the then Minister for Broadcasting, Communications and Digital Media agreed to carry out a comprehensive reform of New Zealand's media content regulatory system.
27. The review was put on hold following the 15 March 2019 Christchurch terror attacks and the prioritisation of regulatory changes in response.
28. As part of the September 2019 Cabinet policy decisions for the work on countering violent extremist content online:
 - 28.1 the previous Minister of Internal Affairs and the then Minister for Broadcasting, Communications and Digital Media were jointly asked to report to Cabinet in early 2020 with the proposed Terms of Reference, engagement approach and timeline for a review of the media content regulatory system [SWC-19-MIN-0133 refers]; and
 - 28.2 it was noted that the review would likely include consideration of the regulation of content on social media.
29. On 15 June 2020, the previous Minister of Internal Affairs and the then Minister for Broadcasting, Communications and Digital Media agreed to defer Cabinet report back on the media content review until early 2021.

My preferred approach is to lead a harm-minimisation focused review of content regulation that works towards a streamlined approach

30. The preferred approach to a review has evolved since the previous Minister of Internal Affairs and the then Minister for Broadcasting, Communications and Digital Media jointly agreed to a review in February 2019. Since that time, the Christchurch terror attack and analysis of media issues arising in the aftermath of the attack have confirmed the need for a comprehensive harm-minimisation focused approach to content across all media, rather than focusing on fixing issues and gaps within the current media content regulatory frameworks. This proposal therefore differs from the report back requested in 2019.

31. I propose that I lead a harm-minimisation focused review of content regulation, with the aim of creating a new modern, flexible and coherent regulatory framework to mitigate the harmful impacts of all media content. The regulatory framework will balance the need to reduce harm with protecting democratic freedoms, including freedom of expression and freedom of the press. The framework will allocate responsibilities between individuals, media content providers, and Government for reducing harm to individuals, society and institutions from interacting with media. The framework will be platform-neutral in its principles and objectives, however, it will need to enable different approaches to reaching these objectives, spanning Government, co-regulatory and self-regulatory approaches. It will also include a range of regulatory and non-regulatory responses.
32. DIA will be the lead agency for the review and will agree on protocols for working closely together with MCH and other interested agencies. MCH will provide ongoing support in stakeholder engagement with broadcasters and other domestic media industries. I understand there is a wide range of government agencies that support this review progressing, including the Department of the Prime Minister and Cabinet (DPMC), Ministry of Justice (MoJ), and Ministry for Business, Innovation and Employment (MBIE), which DIA will consult with where appropriate.
33. The principles proposed to guide the review are attached as **Appendix A**. These will be reviewed and confirmed as part of the Terms of Reference, during the initial stakeholder engagement referred to in paragraph 49 and recommendation 9. The principles seek to achieve a media content regulatory system that minimises harm to individuals, society and institutions from interacting with media, while respecting human rights including freedom of expression and freedom of the press, which includes media entities' ability to provide content and New Zealanders' right to receive that content.
34. A modern, flexible and coherent regulatory framework for all media content would:
 - 34.1 lead to more consistent and comprehensive outcomes, including the reduction and management of overlaps and gaps between Government regulation and co- and self-industry regulatory approaches;
 - 34.2 reduce complexities in the system that consumers and regulated entities face;
 - 34.3 enable identification of priority gaps and problem areas allowing urgent harms to be addressed in a timely manner;
 - 34.4 be adaptive to changes in how people engage with media content; and
 - 34.5 be able to address new and emerging harms.

Impact on the Broadcasting Act and other media-specific regulation

35. Proceeding with a primary focus of media content regulation to minimise harm requires a coherent approach to resolve the fragmentation and gaps in the media content regulatory system. Therefore, the objectives of this review will be best met by leadership from a single agency, with support from other agencies. A new regulatory framework is needed to set minimum standards for harm minimisation across all media content. MCH administers the Broadcasting Act, which provides a Government and industry co-regulatory framework for broadcasters that delivers harm-avoidance objectives, while protecting and enhancing freedom of expression.

36. Analysis carried out in the aftermath of the 15 March 2019 Christchurch terror attacks reinforced that the broadcasting sector does a good job of understanding the standards and principles which help ensure the content it delivers is appropriate for audiences. Given the importance of a socially responsible domestic media, it is necessary that the objectives of the Broadcasting Act continue to be recognised in the media content regulatory system. However, a regulatory framework covering all media channels should be, and be seen to be, developed from a platform-neutral perspective rather than focussing on particular media channels.
37. The creation of a coherent regulatory framework for all media content would also involve significant changes to current regulatory responsibilities. The scale, nature and timing of changes to these regulatory roles will not be determined until the review process is under way.
38. A coherent regulatory framework for all media content would not preclude the existence of co-regulatory and self-regulatory frameworks within the media content regulatory system, especially given the current effectiveness of that approach for the traditional media sector. The new framework would allow minimum standards to be set for all media content. It could allow for co- and self-regulatory arrangements to develop within or alongside it to develop and give effect to those standards.

Related work within DIA and wider Government

Christchurch Call commitments

39. The Christchurch Call is a series of voluntary commitments made by governments, online service providers, and civil society, with a common goal of eliminating terrorist and extremist content online. A range of workstreams, both domestic and international, are being progressed to implement the commitments. I am progressing legislation to address discrete gaps identified in the Classification Act to support the Christchurch Call Commitments that is currently before a select committee. This work has underlined the desirability of a wider review to create a framework that more comprehensively address gaps in the regulatory system and can respond to new and emerging harms and technologies.
40. The proposed regulatory framework to deal with the harmful effects of all media content will help support New Zealand's commitments under the Christchurch Call. We will liaise with other Government agencies involved in meeting Christchurch Call Commitments including MFAT and DPMC.

Royal Commission of Inquiry

41. The Government has agreed to several in-principle proposals to amend the provisions in the Human Rights Act 1993 (HRA) to address the incitement of hatred, and discrimination. The proposals were drawn from recommendations from the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 and a review of the HRA provisions undertaken by the MoJ in 2019. DIA will align its engagement with targeted stakeholder groups with the MoJ's engagement plan to ensure consistency and avoid consultation fatigue.

42. It is likely that some of the recommendations in the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 will intersect with issues that fall under the broad media content review. The review will inform, and be informed by, other work related to those recommendations and I will manage that interrelationship through close consultation with relevant Ministers and agencies.

Review Process

43. The review will design the key elements and intervention approaches to underpin a future regulatory framework that can minimise the risk of a wide range of types of harms. This will include consideration of the merits of having a single act and a single point of regulatory responsibility for media content, the range of legislative instruments, the responsibilities of online platforms for the user-generated content they host and the roles of regulators.
44. Another component of the review will be the evaluation of some specific risks of harm and possible responses to them. This will be undertaken in stages and risks of harm will be prioritised based on scale and severity; and the likely effectiveness and efficiency of mitigating these risks.

Coordination and overview arrangements

45. In addition to close consultation with the Minister for Broadcasting and Media, and DIA working closely together with the MCH, there will be engagement with relevant Ministers and government agencies on aspects of the review that have connections to other Ministerial portfolios.
46. For example, I will engage with the Minister of Justice and expect ongoing collaboration between DIA and MoJ, on relevant issues, including connections to the broader response to the Royal Commission and Harmful Digital Communications Act 2015.
47. DIA has established a Senior Officials Group to provide advice and have oversight over the proposed review. The Officials Group's members are from DIA, MCH, DPMC, MoJ, and MBIE.
48. DIA plans to establish an expert reference group that has an advisory role in issues relating to harm, protecting human rights, traditional media content, and the online media content environment. Membership may also include academics and expert staff from non-government organisations.

Initial targeted stakeholder engagement

49. Following Cabinet approval, DIA officials will proceed immediately with targeted stakeholder engagement on the scope of the review. Early targeted engagement is needed to make informed decisions on the identification and prioritisation of issues for the review given the divergent views among stakeholders. At this stage of the review, targeted stakeholders will be key regulatory actors, government agencies and specialist interest groups in the protection and empowerment of vulnerable populations. This may include:
- 49.1 government agencies;
 - 49.2 Crown entities;
 - 49.3 the New Zealand Media Council;

- 49.4 the Advertising Standards Authority;
- 49.5 Netsafe;
- 49.6 Internet NZ;
- 49.7 the Mental Health Foundation;
- 49.8 selected research organisations; and
- 49.9 selected industry stakeholders, including technology companies.

Wider stakeholder and public consultation

- 50. There is a wide range of industry stakeholders that will be affected by outcomes of a review of media content regulation (e.g. domestic media, social media platforms, online and advertising media). There would be a diverse range of views and willingness to engage with Government on how media should be regulated from these industry stakeholders.
- 51. I expect there will be significant public interest in this area, because of the likely broad and significant effect of proposals on content created by the public and consumed by the public. Furthermore, there is also a considerable level of long-standing frustration from industry and public stakeholders over a range of perceived inadequacies of the current media content regulatory system and the previous abandoned attempts to reform the system. For this reason, I will undertake broad consultation, and will release a discussion document. I will proactively seek views and input from stakeholders that will be affected by proposals and groups that are particularly vulnerable to the effects of harmful media content, including children and young people, and ethnic minorities.
- 52. Given recent overseas proposals to more comprehensively regulate online media content and the global nature of online content, DIA officials will build on existing relationships with relevant government agencies in these jurisdictions to learn from their experiences and consider opportunities for alignment of media content regulatory frameworks.

Indicative Timeline

- 53. The following is an estimated timeline of key milestones (which will need reviewing as the scope of the review is refined):

Milestone/Activity	Timeframe
Initiation of the review	May 2021
Targeted engagement to map systems-level issues, types of harms, further define scope, and determine high-level regulatory options	June 2021 – November 2021
9(2)(f)(iv)	

9(2)(f)(iv)

Financial implications

54. The cost of the next phase of the proposed media content review will be met from within departmental baselines. It is too early to determine the financial implications of implementation of a new regulatory approach.

Legislative implications

55. 9(2)(f)(iv)

56.

Impact analysis

Regulatory Impact Statement

57. There is no requirement to provide a Regulatory Impact Analysis as no decision to create or amend legislation or regulation is being sought.

Climate Implications of Policy Assessment

58. This paper does not have any climate change implications.

Population Implications

59. Reforming the media content regulatory system to reduce harm, while providing for human rights including freedom of expression and freedom of the press, could lead to positive changes across all population groups. This is because almost all New Zealanders interact with media content to some degree. Furthermore, the risks associated with harmful media content extend past the immediate user and can lead to harmful behaviour towards other people and undermine democratic institutions.
60. Although the impacts of a review could be experienced widely, population groups that are more at risk from the harms posed by media content will likely benefit the most from this review. For example, children and young people, and groups that face discrimination such as racial minority groups, women, disabled people, rainbow communities, and gender diverse people are particularly vulnerable to risks of harm posed by media content.

Human Rights

61. Any changes that result from a review of media content regulation will likely have implications for fundamental human rights, particularly freedom of expression, under the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).

62. There is an inherent tension between any regulation of content and the right to freedom of expression. Section 5 of the Bill of Rights provides that the right to freedom of expression may be subject to 'reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.' Any measures that limit this right must be proportionate and necessary.

Consultation

63. MCH, MBIE, MoJ, the Office of Ethnic Communities, the Ministry of Foreign Affairs and Trade, Ministry of Education, Treasury, New Zealand Police, the Government Communications Security Bureau, New Zealand Security and Intelligence Service, Oranga Tamariki, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Women, Ministry for Youth and Development, and the New Zealand Customs Service were consulted on this Cabinet paper. DPMC were informed of this Cabinet paper.
64. Additionally, the following independent Crown entities were consulted: the Office of the Privacy Commissioner, the Office of the Children's Commissioner, the Human Rights Commissioner, the Office of Film and Literature Classification, and the Broadcasting Standards Authority.

Communications

65. Subject to Cabinet approval, I intend to announce the initiation of a broad review of the media content regulatory system.

Proactive Release

66. As per Cabinet Office Circular (18) 4, this Cabinet paper will be proactively released, with redactions made consistent with the Official Information Act 1982.

Recommendations

67. The Minister of Internal Affairs recommends that the Cabinet Social Wellbeing Committee:
1. **Note** that the former Minister of Internal Affairs and the then Minister for Broadcasting, Communications and Digital Media were invited to report back to Cabinet on the proposed Terms of Reference, engagement approach and timeline for a review of the media content regulation system [SWC-19-MIN-0133];
 2. **Note** that the existing media content regulatory system is not capable of adapting to changes in the way individuals rely on and interact with media content, resulting in unmitigated harms;
 3. **Note** that the Films, Videos, and Publications Classification Act 1993 (the Classification Act), the Broadcasting Act 1989 (the Broadcasting Act) and Harmful Digital Communications Act 2015 all aim to reduce harm from media content, but all have shortfalls and there is no consistent or integrated regulatory approach;
 4. **Agree** to the initiation of a harm-minimisation focused media content regulatory system review (the review), led by the Minister of Internal Affairs and the Department of Internal Affairs as lead agency;
 5. **Note** that the harm-minimisation objectives of the review will need to be balanced with other fundamental human rights, including freedom of expression;

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6. 9(2)(f)(iv) [REDACTED]
7. **Note** that the Minister of Internal Affairs will consult closely with the Minister for Broadcasting and Media as the review progresses, to manage any issues that directly impact on the Broadcasting Act;
8. **Note** that the review will likely include matters relevant to other Government workstreams and to the recommendations of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019;
9. **Agree** to Department of Internal Affairs officials carrying out targeted stakeholder engagement on high-level regulatory design options, with the support of Ministry for Culture and Heritage officials;
10. **Agree** in principle to the guiding principles for the review, to support targeted stakeholder engagement;
11. 9(2)(f)(iv) [REDACTED]

Authorised for lodgement

Hon Jan Tinetti

Minister of Internal Affairs

Proactively released by the
Minister of Internal Affairs

Appendix A: Principles of the review

Principles proposed to guide the review

1. A review of media content regulation should seek to achieve a media content regulation system that minimises the risk of harm to individuals, society and institutions from media content, while respecting the right to freedom of expression and preserving the independence of the press.
2. To achieve this key outcome, I propose the following principles guide the review:
 - a. Responsibilities to ensure a safe and inclusive media content environment should be allocated between individuals, media content service providers (analogue, digital and online providers), and Government;
 - Individuals should be empowered to keep themselves safe from harm when interacting with media content;
 - Media content service providers should have responsibilities for minimising harms arising from 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 potentially harmful media content;
 - Where there is an unacceptable risk of harm because of the nature of the media content and/or the circumstances of the interaction (e.g. children being harmed by media content interactions);
 - b. 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;
 - c. 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;

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- d. 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; and
- e. Interventions should be designed to maximise opportunities for international coordination and cooperation.

Proactively released by the
Minister of Internal Affairs



Internal Affairs briefing

Hon Jan Tinetti
Minister of Internal Affairs

Title: Information briefing: The Department's recommended approach to a review of the media content regulatory system

Date: 10 February 2021

Key issues

On 11 February 2021, you are meeting with the Minister for Broadcasting and Media, Hon Kris Faafoi, to discuss progressing a review of the media content regulatory system.

The media content regulatory system has two significant high-level problems:

- The regulatory system is not capable of adapting to changes in the way individuals rely on and interact with media content, resulting in unmitigated harms; and
- New Zealand broadcasters face a more complex regulatory environment than other media organisations.

To minimise the growing risk of harm to individuals, society and institutions from media content and to address the regulatory complexity broadcasters face, the Department recommends two complementary reviews:

- You could lead a harm-minimisation focused review of content regulation, with the aim of creating a single regulatory framework to address the harmful impacts of media content; and
- Hon Kris Faafoi could lead a review of the broadcasting regime to provide consistency with the proposed framework and to further support a socially responsible broadcasting sector.

This approach differs from the advice given to the previous Minister of Internal Affairs, however the scope of what is proposed is similar.

Action sought	Timeframe
Note that the Department recommends you lead a harm-focussed review of media content regulation and that you discuss this proposal at your meeting with Hon Kris Faafoi;	Before your 11 February 2021 meeting with Hon Kris Faafoi.
Note that broadcasting media content would be covered by the scope of a harm-focussed media content regulation review	
Note that the Department recommends you raise with Hon Kris Faafoi the option of him leading a separate review of the professional standards for domestic broadcast media; and	Both at the 11 February 2021 officials meeting, and after your meeting with Hon Kris Faafoi.
Discuss with officials your preferences for progressing a review the media content regulatory system.	

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Nick Law	Policy Manager	9(2)(a)	9(2)(a)	✓
Michael Woodside	Policy Director	9(2)(a)	9(2)(a)	
Return electronic document to:	9(2)(a)			
Cohesion reference	SS74WDQEK3HX-411838051-143			
Ministerial database reference	IA202100088			

Purpose

1. On 11 February 2021, you are meeting with the Minister for Broadcasting and Media, Hon Kris Faafoi, to discuss progressing a review of media content regulation¹.
2. This briefing sets out the Department's view on how to best approach a review on media content regulations and includes:
 - background information on the history of the proposed media content regulatory review (**Appendix A**); and
 - a diagram of the Department's proposed outcomes and approach to a review of the media content regulatory system (**Appendix B**) and talking points (**Appendix C**), to support discussing this position with Hon Kris Faafoi.

Background

There have been ongoing attempts to review New Zealand's existing media content regulatory system

3. Media content is defined in this briefing as any communication (for example broadcasts, publications,² and social media posts). The term media means how media content is made available (for example broadcasters, publishers, and online platforms).
4. New Zealand's current media content regulatory system is comprised of the Classification Act, the Broadcasting Act and voluntary self-regulation.³ Our existing regulatory system is outdated and based on the type of media by which content is made available. As a result, it addresses harm in a shrinking proportion of the media content consumed and provides little protection at all on the media types which pose the greatest risk for harmful content.
5. In February 2019, the previous Minister of Internal Affairs and the then Minister for Broadcasting, Communications and Digital Media, Hon Kris Faafoi, agreed to carry out a comprehensive reform of New Zealand's media content regulation system.
6. On 15 June 2020, the previous Minister of Internal Affairs and Hon Kris Faafoi agreed to defer Cabinet report back on a review of the media content regulatory system until early 2021. Further information on the history of the proposed review of the media content regulatory system is at Appendix A.

You and Hon Kris Faafoi have both indicated that you are interested in progressing a review of media content regulation

7. You have advised officials that a review of media content regulation that covers online harms is to be prioritised in the Internal Affairs work programme. Hon Kris Faafoi has indicated to Ministry for Culture and Heritage (MCH) officials that he expects advice on how to proceed with a review of the media content regulatory system by the end of February 2021.

¹ In this briefing we use the term regulation broadly to include consideration of options such as self-regulatory arrangements, including voluntary codes and memorandum of understandings.

² Publication includes films, videos, books and all forms of electronic communications.

³ The Digital Harmful Communications Act 2015 sits parallel to the media content regulatory system and regulates online communication, as defined in the Act's communication principles.

8. 9(2)(f)(iv)



9. 9(2)(g)(i)



The Department proposes that you lead a harm-focused content regulation review

10. The Department proposes you lead a review of media content regulation that aims to create a single regulatory framework for all media content, focused on minimising harm. The review would consider the merits of having a single Act for regulating media content for this purpose, and of a single point of regulatory responsibility for media content.

11. 9(2)(g)(i)

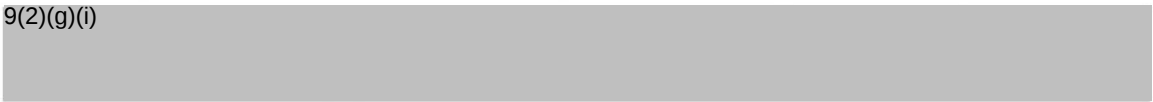


We consider an Internal Affairs-led content regulation review preferable to a joint media content and media conduct regulatory review

12. We previously recommended a fundamental review of media content and regulation of media content providers. Our recommended approach has evolved since the previous Minister of Internal Affairs and Hon Kris Faafoi jointly agreed to a review in February 2019.

13. This new advice reflects further analysis carried out in the aftermath of the 15 March 2019 Christchurch terror attacks, including analysis of the risk of harm from media content and the limits of current media content regulatory approaches in minimising this harm. This analysis reinforced that the media content delivered by the broadcasting sector poses a relatively low-risk to New Zealanders, and therefore, a more platform-neutral for a harm-focused review of media content regulation is required.

9(2)(g)(i)



14. 9(2)(g)(i)



⁴ This year's legislation Programme process invited bids for legislation planned for the next two years as well as for 2021.

9(2)(g)(i)

15.

16.

Joint reviews are more complex, we consider addressing unmitigated content harms is a high priority and should be the primary focus of a review

17. A joint media review of the regulation of all media content would not be able to prioritise addressing urgent harms in a timely manner. Such a review would likely require a minimum of two parliamentary terms, widest possible public consultation and debate, and significant resources that are not available. A review of this magnitude and duration risks becoming vulnerable to changes in Government priorities and focus.
18. Instead, the we consider it important that the review primarily focus on minimising harm relating to media content. We suggest that to achieve this effectively and sustainably, the scope of the review should initially include development of a framework for analysis that can be applied to all media types. This would enable identification of priority gaps and problem areas which we would propose be the main objectives to correct within the first phase of the review.
19. Proceeding with a primary focus of media content regulation to minimise harm would not require joint leadership of the review across the Internal Affairs and Broadcasting portfolios. While the Broadcasting Act does provide for broadcasting codes with a harm avoidance objective, these are in the context of, and subordinate to, the Act's overarching aim to support a thriving domestic broadcast media, through encouraging a socially responsible broadcasting industry.
20. A jointly led review would:
 - risk confusion and compromise of the harm minimisation objective with other facets of the broadcasting systems objectives;
 - give a different and disproportionate emphasis on an industry which provides only a small and decreasing share of the media content that New Zealanders interact with, and poses a comparatively low-risk of harm; and
 - have resourcing and process implications that may reduce the likelihood of delivering significant change within this parliamentary term (for example, less

flexibility with resourcing, and additional processes to provide clear agency and ministerial accountability).

21. While a joint review would have advantages in terms of ensuring consistency and alignment between any changes to the media content regulatory framework and the Broadcasting Act, those objectives can be managed by consultation and cooperation between agencies and do not require joint leadership.

The Broadcasting Act mixes content regulation and professional standards and is not a useful starting point to define the scope of a fundamental review

22. The primary drivers and purposes of the Classification Act and Broadcasting Act differ in focus, and so a review defined by those acts would involve different underpinning principles and outcomes. For example, a harms-focused approach (Classification Act) to content regulation would likely continue to rely mainly on proactive regulation to avoid exposure to serious harms. The regulation of media conduct (Broadcasting Act) would likely rely more on regulations that are responsive to consumer concerns and complaints. A joint review would involve compromise, including developing a single set of guiding principles, which would reduce the effectiveness of delivering the distinct objectives of each framework.
23. Furthermore, the broadcasting industry provides only a small and decreasing proportion of the media content that New Zealanders interact with. Furthermore, the broadcasting sector generally adheres to the socially responsibility principles espoused in the Broadcasting Act and poses a very low level of risk of harm to New Zealanders compared to other media types, such as online content-sharing platforms.

24. 9(2)(g)(i)

25. Instead, a harm-minimisation focus on a single regulatory framework for all media content would lead to more even, consistent and comprehensive outcomes, and could be incorporated into professional standards to support a socially responsible New Zealand media industry.

A review of content regulation would provide an opportunity to also review conduct regulation for domestic broadcast media

26. We recommend that you lead a review of media content regulation, with the opportunity to canvass with Hon Kris Faafoi the potential for him to lead a separate review of the framework governing broadcasting, in accordance with existing ministerial responsibilities.
27. The Acts for which you and Hon Kris Faafoi have responsibility in the media content regulatory system have different but complementary purposes. The Classification Act is focused on reducing harm through interaction with media content. In contrast, the Broadcasting Act's overarching aim is to support a thriving domestic broadcast media through encouraging a socially responsible broadcasting industry.

28. For example, one of the Broadcasting Standards is that reporting on controversial issues of public importance must be balanced. This Standard encourages the broadcasting industry to contribute to an informed citizenry, and therefore support the public good – a requirement that includes, but goes beyond, minimising harm from media content.
29. To minimise harm, the Classification Act places restrictions on what content is permitted and requires content warnings for film and video media. This restriction system is primarily proactive to minimise the risk of harm to New Zealanders.
30. The Broadcasting Act places conduct obligations on broadcasters to encourage responsible domestic broadcast media, including compliance with codes developed under the leadership of the Broadcasting Standards Authority. The subject matter of those codes, which are co-designed by broadcasters with public consultation, includes mitigation of harm through content warnings and guidelines about programming times. They do not, however, have the force of law.
31. The Broadcasting Act regime is primarily reactive as it relies on oversight by the public through a complaints mechanism. This allows the Broadcasting Act to be responsive to changing societal expectations.
32. The functions of the two Acts complement one another. While the Classification Act regulates access to harmful media content, the Broadcasting Act encourages a domestic broadcast media sector that champions public interest values.
33. The result is that harms not captured by the Classification Act are, in part, mitigated by the positive spill overs from the broadcasting sector. For example, the Broadcasting Act encourages broadcasters to help develop an informed citizenry, which helps to mitigate the effects of disinformation. This is not directly targeted by the Classification Act.

A review of media content regulation will affect the Broadcasting Act

34. The establishment of a single regulatory framework for media content would mean that the Broadcasting Act would no longer be the primary basis for regulating media content delivered by broadcasters in order to avoid or mitigate harm. This would involve amendments to the Broadcasting Act to avoid overlap in the regulation of media content.
35. While a single regulatory framework for media content would still allow the Broadcasting Act to regulate the conduct of broadcasters, because the Classification Act and Broadcasting Act serve complementary functions. Changes to the media content regulation will still have a less direct effect on the conduct regulations for broadcasters.

There are risks of separate reviews, which can be managed

36. Since the two regulatory frameworks are interconnected, conducting two separate reviews under different portfolios could risk creating inconsistencies in the system. The phasing of the two reviews will be important in creating coherence across the regulatory frameworks. Common issues and interdependencies can be managed by close consultation between the Department and MCH.
37. Conducting separate reviews will also lead to some stakeholders, such as broadcasters, being consulted by both the Department and MCH, which could create confusion and consultation fatigue for stakeholders. However, the broadcasting industry will have a

strong interest in any review of the media content regulatory system, therefore stakeholder frustration with repeated engagement is unlikely to be an issue.

38. Furthermore, if separate reviews were to run concurrently, the Department and MCH could seek to arrange stakeholder consultation close together to avoid drawing out this process for this group of stakeholders.

Next Steps

39. There will be opportunity to discuss this briefing's advice at your 11 February 2021 meeting with officials.
40. On 11 February 2021, you will meet with Hon Kris Faafoi to discuss a review of the media content regulatory system.
41. After your meeting with Hon Kris Faafoi, officials will be available to discuss your preferred approach to a review of the media content regulatory system.
42. Once you have indicated your preferred approach, the Department will prepare a briefing on how to progress it. This will include:
- the proposed scope;
 - guiding principles;
 - options for phasing the review;
 - an analysis of identified harms that could be addressed;
 - high-level timeframe; and
 - a stakeholder engagement plan.
43. In the instance that you and Hon Kris Faafoi decide to conduct a joint media content review, this work will be joint with MCH.
44. We will provide you with an information briefing on international policy initiatives to regulate online content by 18 February 2021.
45. You are due to jointly report back to Cabinet, with Hon Kris Faafoi, in early 2021, on the proposed terms of reference, engagement approach and timeline of a media content review. When needed, we will support you to deliver this report-back.

Recommendations

We recommend that you:

- a) **Note** that there is growing risk of harm to New Zealanders from media content that the current regulatory system is not able to respond to;
- b) **Note** that due to time constraints, the Department has informed MCH of the proposed advice but have been unable to undertake consultation;
- c) **Note** that the Department recommends you lead a harm-focussed review of media content regulation and that you discuss this proposal with Minister for Broadcasting and Media, Hon Kris Faafoi;
- d) **Note** that broadcasting media content would be covered by the scope of a harm-focussed media content regulation review;
- e) **Note** that the Department recommends you raise with Hon Kris Faafoi, that a harm-focused review of media conduct would not preclude him the option of leading a separate review of *conduct* regulation for broadcasters; and
- f) **Discuss** with officials your preferences for progressing the media content review.



Michael Woodside
Policy Director



Hon Jan Tinetti
Minister of Internal Affairs

10 / 02 / 2021

Appendix A: History of the proposed review of the media content regulatory system

1. Our existing regulatory system addresses harm in a shrinking proportion of the media consumed and provides little protection at all regarding the media types which pose the greatest risk for harmful content.
2. Broad reviews of the system have been attempted since 2008 but have not progressed due to shifting government priorities. This has meant that work in this area has been reactive and limited to addressing specific issues or “gaps” identified in the system as they become priorities.
3. Most recently, in February 2019, the previous Minister of Internal Affairs and the then Minister for Broadcasting, Communications and Digital Media, Hon Kris Faafoi, agreed to carry out a comprehensive reform of New Zealand’s media content regulation system.
4. The review was put on hold following the 15 March 2019 Christchurch terror attacks and the prioritisation of regulatory changes in response, and then remained on hold due to the need to prioritise immediate COVID-19 response and recovery work across government.
5. On 15 June 2020, the previous Minister of Internal Affairs and Hon Kris Faafoi agreed to defer Cabinet report back on the media content review until early 2021.
6. Since July 2020, officials from the Department and MCH have been working together to develop our respective positions on the purpose and scope of a review and to understand each other’s perspective.

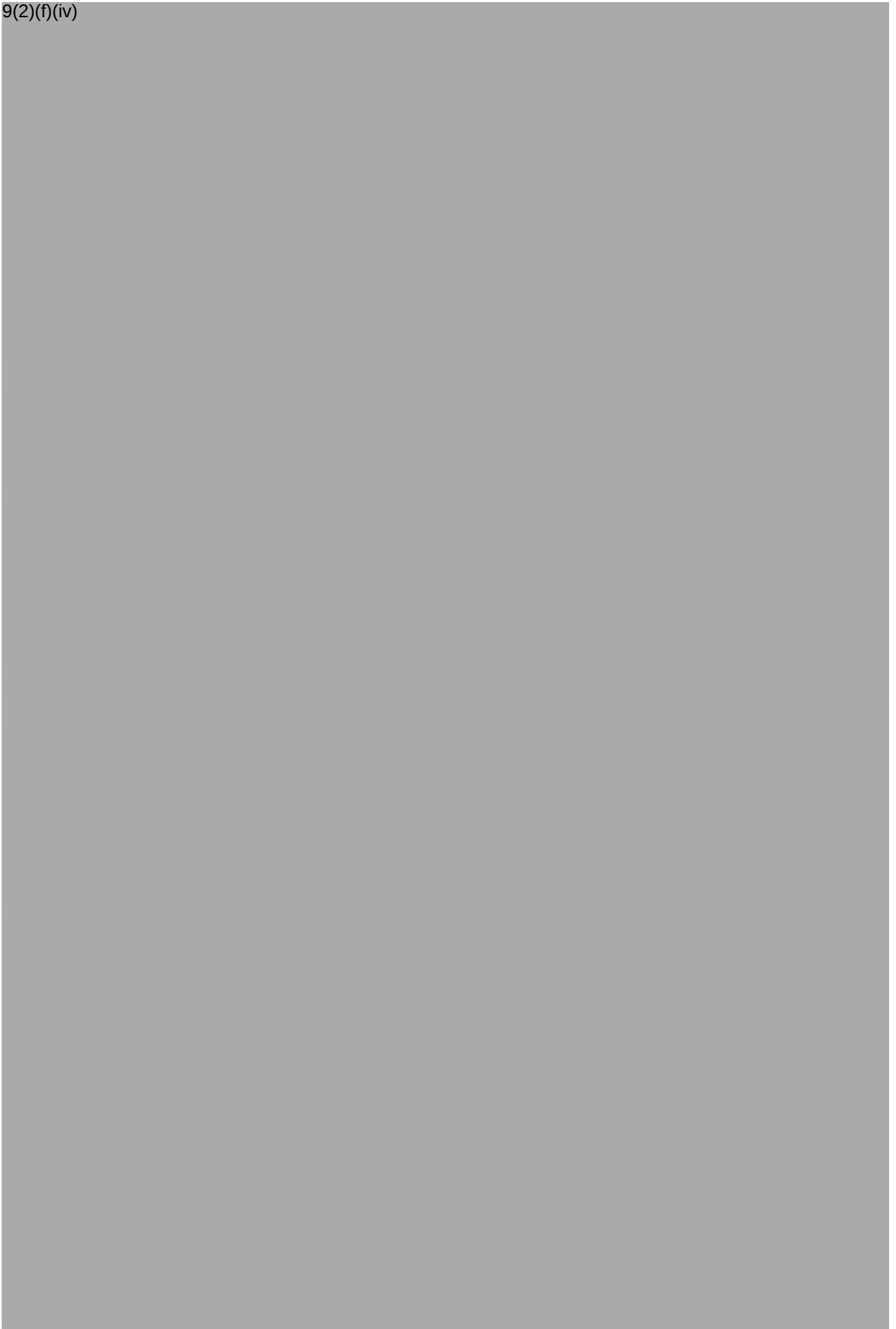
Appendix B: Diagram to support your meeting with Hon Kris Faafoi

9(2)(f)(iv)



Appendix C: Talking points

9(2)(f)(iv)





Internal Affairs briefing

Hon Jan Tinetti
Minister of Internal Affairs

Title: International proposals for comprehensive online content regulatory frameworks

Date: 19 February 2020

Key issues

You previously requested information on international approaches to regulating online content. Internationally, governments are seeking to modernise their media content regulatory regimes to mitigate the risk of harm posed by online media content. Recently, there has been a proliferation of international proposals for developing new comprehensive regulatory frameworks for online content, particularly across Europe. These proposals place greater accountability on online platforms for the user-generated content they host.

International regulatory frameworks for online content offer opportunities for lessons and alignment. However, regulating online content is complex and since most of these proposals have not been enacted yet, it is likely that the effectiveness of different approaches and any unintended consequences will not be known for some time.

Action sought

Note that you requested information from officials on recent international proposal to regulate online content; and

Note that other jurisdictions' regulatory frameworks for online content offer opportunities for lessons in best practice and alignment.

Timeframe

At your convenience

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Nick Law	Policy Manager	9(2)(a)	✓
Lucy Gentles	Policy Analyst	9(2)(a)	
Return electronic document to:	9(2)(a)		
Cohesion reference	SS74WDQEK3HX-411838051-160		
Ministerial database reference	IA202100242		

Purpose

1. In December you requested from officials, information on international policy initiatives to comprehensively regulate online content.

There is growing international concern over the risk of harm posed by online media content

2. Similar to NZ, other jurisdictions are also grappling with outdated media content regulatory systems that do not have the flexibility to respond to new forms of media and the risk of harm they pose. Previously, the dominant view has been that user-generated content should be largely left unregulated to protect freedom of expression. This view holds that freedom of expression needs to be given paramount protection to reap the benefits of the internet's user participation framework. These benefits include increasing public access to information, allowing public political discussion to occur at national and global levels, and giving greater political voice to marginalised group.
3. Recent high-profile cases of serious harm arising from content hosted on online social networks have propelled growing international debate over the responsibilities of online platforms and governments to regulate harmful online content. These high-profile cases include the streaming of the 15 March 2019 Christchurch Terror Attack, allegations of foreign election interference, COVID-19 misinformation, the 2021 storming of the United States Capitol and violations of data privacy
4. There is also growing recognition that characteristics of the online environment amplify the volume, speed, and reach of harmful media content, which increases the risk of online media content causing harm to individuals, society and democratic institutions compared to traditional media. These characteristics of the online environment include:
 - **People are less inhibited when communicating** online leading them to be more likely to create and share harmful media content. This is because social and cultural constraints on speech do not operate online to the extent they do offline. Contributing to this disinhibition effect is the relative anonymity of online content creators and sharers. In addition, the decoupling of content creators and content distributors weakens accountability, contributing to the disinhibition effect;
 - **Social bots and fake profiles**¹ are being used amplify the spread of harmful content; and
 - **Social interests and commercial incentives are in conflict** - the business incentives of online platforms are, in some cases, misaligned with protecting users and the broader public from harm. The business models of online platforms are structured around maximising audience engagement for advertising revenue. For this reason, recommendation systems² usually prioritise pages which are visited most often and have the greatest time spent on them. Content that elicits an emotional response, such as outrage, disgust and anger

¹ Social bots automatically produce, share, and like content on media platforms. Fake profiles are operated manually, and in some cases by paid workers.

² Recommendation systems on online platforms refer to the ordering or visibility of content to users.

are more likely to be engaged with and therefore this type of content is given more visibility on platforms.

Overseas Governments are considering more comprehensive regulatory frameworks for online content, in response to the risk this content poses

5. Against this backdrop of serious societal harm arising from online media content and greater insight into the online environment propensity to spread harmful media content, there have been several recent regulatory proposals for comprehensive frameworks for online content across Europe. **Appendix B** outlines and compares several international policy initiatives to regulate online content, which place greater accountability on online platforms.

While these overseas policy initiatives offer learning opportunities, the success of these regulatory frameworks remains to be seen

6. Overseas online content policy initiatives provide useful models for considering greater regulatory and non-regulatory responses to the increase risk of harm online media content poses to New Zealanders.
7. Despite recent regulatory initiatives, comprehensive regulation of online content is still an unprecedented feat, and the effectiveness and unintended consequences of these overseas regulatory frameworks are still unknown. Regulating online content is complex:
 - the borderless nature of the online environment poses compliance challenges;
 - the scale of online content makes it administratively challenging to apply rules consistently and quickly; and
 - online content-sharing platforms resemble public spheres – they are the primary point of access to information, political discussion and political organisation for many people – as a result there are intricate challenges to prohibiting certain types of content whilst preserving freedom of expression.
8. However, there is opportunity to manage these complexities through aligning any potential regulatory framework for online content with that of other jurisdictions, thereby increasing the efficiency and effectiveness of regulation. For example, aligning online content regulations with other jurisdictions' existing regulations may increase compliance as regulated entities already have policies in place to adhere to similar regulatory requirements.
9. However, there is a trade-off between the benefits of a more efficient regime through regulatory alignment and being able to tailor a response to New Zealand circumstances. For example, New Zealand values and norms differ to those held in other countries and as a result, aligning our regulatory framework for online content may mean compromises regarding normative decisions over what speech is permissible.

Other jurisdictions' approaches to regulating online content will be considered in the media content regulatory review

10. We will consider international regulatory frameworks for online content in our advice on the proposed media content regulatory review. As international proposals for

comprehensive regulatory frameworks progress, we will assess the desirability in copying and aligning our recommendations with these approaches.

Recommendations

11. We recommend that you:

- a) **Note** that you requested information from officials on recent international proposal to regulate online content;
- b) **note** that other jurisdictions' regulatory frameworks for online content offer opportunities for lessons in best practice and alignment;
- c) **note** that regulating online platforms is complex and there are intricate challenges to making online platforms accountable for the content they host while still protecting the freedom of expression of users; and
- d) **note** that international approaches to comprehensively regulating online content will be considered as part of the media content regulatory review.

Nick Law
Policy Manager

Hon Jan Tinetti
Minister of Internal Affairs

_____/_____/_____

Appendix A: Significant international policy initiatives to regulate online content

12. This appendix outlines recent international proposed and enacted comprehensive regulatory frameworks for online content, which impose greater accountability on platforms for the content they host. These selected proposed and enacted frameworks are the German Network Enforcement Act, UK Online Safety Bill, The EU Digital Services Act, and the Irish Online Safety and Media Regulation Bill.

Overseas proposed and enacted regulatory policies of online content vary in scope and design

13. There exists a vast breadth of design consideration for creating a regulatory framework for online content. The selected proposed and enacted frameworks for online content in this appendix vary in scope and design. For example, regulatory frameworks can be outcome-focused (i.e. requirements are to remove specified content), or procedural-focused (i.e. requirements are to have processes in place to reduce harm and/or illegal content (e.g. having a point of contact to regulators, enforcing their own terms of services, having a robust complaints system and transparency reporting on content moderation)).
14. The range of regulatory design features across different international proposed and enacted frameworks are outlined in the table below.

Comparison of international proposed and enacted regulations on online content

Regulatory design features and timing	German Network Enforcement Act	UK Online Safety Bill	The EU Digital Services Act	Irish Online Safety and Media Regulation Bill
Regulatory framework covers	Online content only	Online content only	Online content only	Both traditional media and online content are covered
Content covered	Illegal	Broader set of harm	Illegal	Broader set of harms
Procedural or outcomes focused	Outcome	Both	Procedural	Procedural
Codes of Practice are set by	No codes	Regulator Ministerial sign-out will be required for codes covering child sexual exploitation and terrorism material	European Commission (executive branch of the EU)	Regulator

Regulatory design features and timing	German Network Enforcement Act	UK Online Safety Bill	The EU Digital Services Act	Irish Online Safety and Media Regulation Bill
Platforms in scope	Commercial online social networks with at least 2 million members	Hosts of user-generated content, including online interaction, which can be accessed by users in the UK and search engines. Differentiated obligations on platforms based on the risk of harm	Any service provided to a resident in the EU Differentiated obligations on platforms based on the size of the platform	All services that facilitate the dissemination of or access to user-generated content are potentially in scope
Timing	Passed in June 2017	Legislation expected to come into effect 2021	Legislation expected to come into effect 2024	Not announced

The German Network Enforcement Act (enacted legislation)

15. Germany passed the Network Enforcement Act (NetzDG) in June 2017, which makes commercial social networks with at least two million users, liable for hate speech that violates German law. The NetzDG Act followed rampant online hate speech during the European migrant crisis³, which was linked to hate crimes in the physical world. The German Government initially sought to encourage social media companies to voluntarily apply German hate speech laws on their platforms. However, the German Government ultimately determined that the voluntary efforts of social media companies were inadequate, and sanctions were needed to enforce platforms compliance with German hate speech laws.⁴
16. Online platforms in scope must set up user-friendly complaint mechanisms to report illegal hate speech. Online platforms face significant fines if they do not remove manifestly illegal content within twenty-four hours of notice and other illegal content with a week of notice.
17. NetzDG has drawn criticism for its potential to stifle free speech, including from the former United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. The main criticism is that it bestows significant control on private companies over decisions affecting free speech – as companies must make determinations over what is illegal content without law enforcement. This has led to concern that NetzDG will lead to excessive removal of

³ The European migrant crisis (also known as the refugee crisis).

⁴ David Kaye, Speech Police: The Global Struggle to Govern the Internet, 51-58.

content by private companies to avoid the possibility of being sanctioned. However, the extent of the law's impact on freedom of expression is not yet clear.

The United Kingdom's (UK) Online Safety Bill (proposed legislation)

18. On 15 December 2020, the UK released its Full Government Response to the Online Harms White Paper and has since announced an Online Safety Bill will be introduced in 2021. The Response paper builds on the Online Harms White Paper published in April 2019, which proposed a comprehensive regulatory framework, addressing a spectrum of online harms from illegal to legal but harmful content.
19. The Bill proposes a new regulatory system for online content, which creates a duty of care on online platform operators to protect their users. Platforms in scope are hosts of user-generated content which can be accessed by users in the UK; and/or facilitate public or private online interaction between service users, one or more of whom is in the UK; and search engines.
20. The "duty of care" framework is aimed to be proportionate and risk-based, ensuring companies in scope have the appropriate systems and processes in place to respond to harmful content and activity, while protecting users' rights. The regulatory framework will be set out and overseen by its existing communications regulator (Ofcom),⁵ which will be given broad powers, including the ability to enforce fines of up to £18 million or 10% annual turnover.
21. The regulatory framework will have a two-tiered approach, imposing additional requirements on the most high-risk, high-reach services (category 1), to the requirements of most services (category 2).

The European Union (EU) Digital Services Act (proposed legislation)

22. The EU Digital Services Act proposes to impose a uniform set of obligations on all online platform operators. These obligations are procedural rather than outcome focused, for example social media companies must have a complaints system. Platforms only have obligations to remove illegal content once they have knowledge of it on their platform.
23. Platforms with more than 45 million EU users (10% of the EU population) have additional requirements to smaller platforms.

The Irish Online Safety and Media Regulation Bill (proposed legislation)

24. The Irish Online Safety and Media Regulation Bill proposes:
 - to replace the existing broadcasting regulator with a new regulatory agency that will have responsibility for both traditional and new media;
 - to update and align the way traditional television broadcasting and video-on-demand services are regulated; and
 - to establish a regulatory framework to control the spread and amplification of defined categories of harmful online content.
25. The regulator will be given the power to set codes to govern the standards and practice of regulated entities.

⁵ Ministerial sign-out will be required for codes covering child sexual exploitation and terrorism material.

26. The Bill covers defined categories of harmful online content, which are:
- content which it is a criminal offence to share;
 - serious cyberbullying material;
 - material promoting eating disorders; and
 - material promoting self-harm and suicide.

Other judications where online regulation is on the policy agenda

27. Australia – Online Safety Bill.
28. Canada – Broadcasting and Telecommunications Legislative Review.
29. France – Fighting Hate on the Internet Bill.

Proactively released by the
Minister of Internal Affairs