Te Mana Whakaatu

CLASSIFICATION OFFICE

Responses to questions for feedback

Definitions in the proposals		Page
1.	What do you think about the way we have defined unsafe and harmful content?	3
2.	Does the way we have defined unsafe and harmful content accurately reflect your concerns and/or experiences relating to harmful content?	3

About the proposed new framework to regulate platforms		
3.	Have we got the right breakdown of roles and responsibilities between legislation, the regulator and industry?	5
4.	Do you agree that government should set high-level safety objectives and minimum expectations that industry must meet through codes of practice?	9
5.	Do you agree with how we have defined 'platforms'? Do you think our definition is too narrow, or too broad? If so, why?	9
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?	11
7.	Do you think we have covered all core requirements needed for codes of practice?	12
8.	What types of codes and industry groupings do you think should be grouped together?	14
9.	Do you think some types of platforms should be looked at more closely, depending on the type of content they have?	14
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?	15
11.	What do you think about the different approaches we could take, including the supportive and prescriptive alternatives?	16
12.	Do you think that the proposed model of enforcing codes of practice would work?	16
13.	Do you think the regulator would have sufficient powers to effectively oversee the framework? Why/why not?	17
14.	Do you agree that the regulator's enforcement powers should be limited to civil liability actions?	18
15.	How do you think the system should respond to persistent non-compliance?	18
16.	What are your views on transferring the current approach of determining illegal material into the new framework?	22

17. Should the regulator have powers to undertake criminal prosecutions? 25

18. Is the regulator the appropriate body to exercise takedown powers? 25

19. Should takedown powers be extended to content that is illegal under other New Zealand laws? If so, how wide should this power be? 26

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? 27

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? 28

22. Have we identified all key actors with responsibilities within the framework? Are there any additional entities that should be included? 30

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? 31

24. Do you think that our proposals will sufficiently address harms experienced by Māori? 33

25. What do you think about how rights and press freedoms are upheld under the proposed framework? 34

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? 35

References 37

Definitions in the proposals

1. What do you think about the way we have defined unsafe and harmful content?
(Page 18 of the discussion document)

The focus on consumer protection is an appropriate approach for these proposals.[1] Suppliers of products and services are legally required to make sure that they or their products will do what they say they will do.[2] Platforms should be subject to similar requirements and it is reasonable for New Zealanders to expect that online platforms will follow their own terms and conditions of service.[3]

However, we are not confident that the distinction between "harmful" and "unsafe" content is useful or necessary.[4] We believe these terms are likely to cause confusion.[5]

Both consumers and suppliers of content would benefit from a single, simple definition of harm. Our view is that "harmful" content and "unsafe" content are simply two sides of the same coin, and that such a distinction would not assist with the regulation of content. The content regulatory system as a whole should, however, treat both responses to content harms (after they have occurred) and prevention of content harms (before they occur).

2. Does the way we have defined unsafe and harmful content accurately reflect your concerns and/or experiences relating to harmful content?
(Page 18 of the discussion document)

The proposals broadly cover the types of harm our experts deal with in classifying publications. We provide below some details of our experiences of what harmful content includes.

In our experience, there are two main categories of harmful content that meet the high threshold of being objectionable under the Films, Videos, and Publications

---

1 Department of Internal Affairs *Discussion Document: Safer Online Services and Media Platforms* (1 June 2023) [discussion document] at [14], [23]–[24] and [26].
2 See generally Fair Trading Act 1986, sections 9–11; and Consumer Guarantees Act 1993, parts 1 and 4.
3 Other countries have similar expectations of online platforms: see for example eSafety Commissioner "eSafety demands answers from Twitter about how it's tackling online hate" (press release, 22 June 2023).
4 Discussion document, above n 1, at [10].
5 One study on online content harms experienced by children demonstrated that "harm … is often conflated with risk": Vera Slavtcheva-Petkova "Written evidence in the House of Lords' 'Children and the Internet' Inquiry (CHI0054)" at [1.5].

Classification Act 1993: content that is harmful to everyone (including adults and young people),[6] and content that is harmful to young people but not to adults.

We also deal with other types of harmful content that may not meet this high threshold, but still fit the statutory criteria for being classified. One example is a 221-page text document analysing the Christchurch mosque attacks and promoting a 'false flag' narrative around what happened that day.[7] This was restricted to adults, since younger people are not likely to have the critical skills to evaluate its claims. Another publication, a flyer intended to capture the interest of those who harbour racist beliefs, was classified as unrestricted.[8]

More general examples of content that is lawful for adults to access, but can cause significant harm to children and young people who access it (either intentionally or accidentally), include pornography and content with imitable behaviour. This content is often difficult for young people to avoid.[9]

Publications can be classified under sections of the Classification Act dealing with specific types of content.[10] However, under these sections, publications can only be age-restricted and not banned, even if the language used is extremely offensive, racist, or misogynistic, or if the behaviour shown, described, or encouraged is extremely dangerous.[11] Very few publications dealing with these types of content have been submitted to us for classification.[12] It is important to note that publications cannot be classified based on their potential to cause offence, since the Act does not allow this.

Another category of harmful content meets neither the high threshold for objectionability nor specific provisions for restriction. Some commonly used terms for this category include 'lawful but awful', 'harmful but legal', or 'grey-area content'. Various examples fall into this category including, but not limited to, misinformation, conspiracy theories, offensive comments, hate speech, extreme materials on disordered eating, and misogynistic content. These examples illustrate the broad range of content that largely falls outside of our current content regulatory system.

---

6 This includes violent extremist publications – see for example OFLC 1900148.000 *Christchurch Mosque Attack Livestream* (27 March 2019); and OFLC 1900149.000 *The Great Replacement* (29 March 2019) – and child sexual abuse material.

7 OFLC 2000109.000 *New Zealand's Darkest Day?* (15 April 2020).

8 OFLC 1900373.000 *It's Alright to be White* (2 September 2019).

9 42% of young people we surveyed agreed that "it is hard for me to avoid seeing harmful or offensive content online": Te Mana Whakaatu—Classification Office *What We're Watching* (June 2022) at 32.

10 Films, Videos, and Publications Classification Act 1993, section 3A (dealing with highly offensive language) and section 3B (dealing with imitable behaviour).

11 This includes content that encourages imitable behaviour, such as self-harm or suicide: see for example OFLC 1700158.000 *13 Reasons Why: Episode 1 (Tape 1, Side A)* (27 April 2017).

12 Recent examples include OFLC 2200201.001 *Succession: Season 3 (Episodes 4–6)* (29 June 2022); OFLC 2100493.000 *Jackass Forever* (14 December 2021).

Importantly, although content cannot be classified for these elements alone, the same content can be classified (and age-restricted or banned) if other elements of it meet the legislative criteria.

For example, in 2021, we classified and banned two image files in a meme format that trivialised violence against women and girls, as well as sexual violence, in a degrading and dehumanising manner.[13] These publications perpetuated harmful misogynistic attitudes. However, these publications were not banned for this reason. The bans were primarily due to the extreme extent and degree of dehumanisation and degradation intended for the amusement of the viewer.

Also in 2021, we conducted an assessment of a publication containing misinformation that was circulated in Aotearoa.[14] We concluded that the publication did not meet the criteria under the Act even though it was likely to harm New Zealanders.

Although this shows that a broad definition of harm is required, we are mindful that the proposals leave the scope of the regulator's powers unclear, and appears to extend the definition to some issues that are dealt with by existing agencies.[15]

About the 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 of the discussion document)

We generally support the approach taken in the discussion document to identifying the roles and responsibilities of those involved in the content regulatory system.

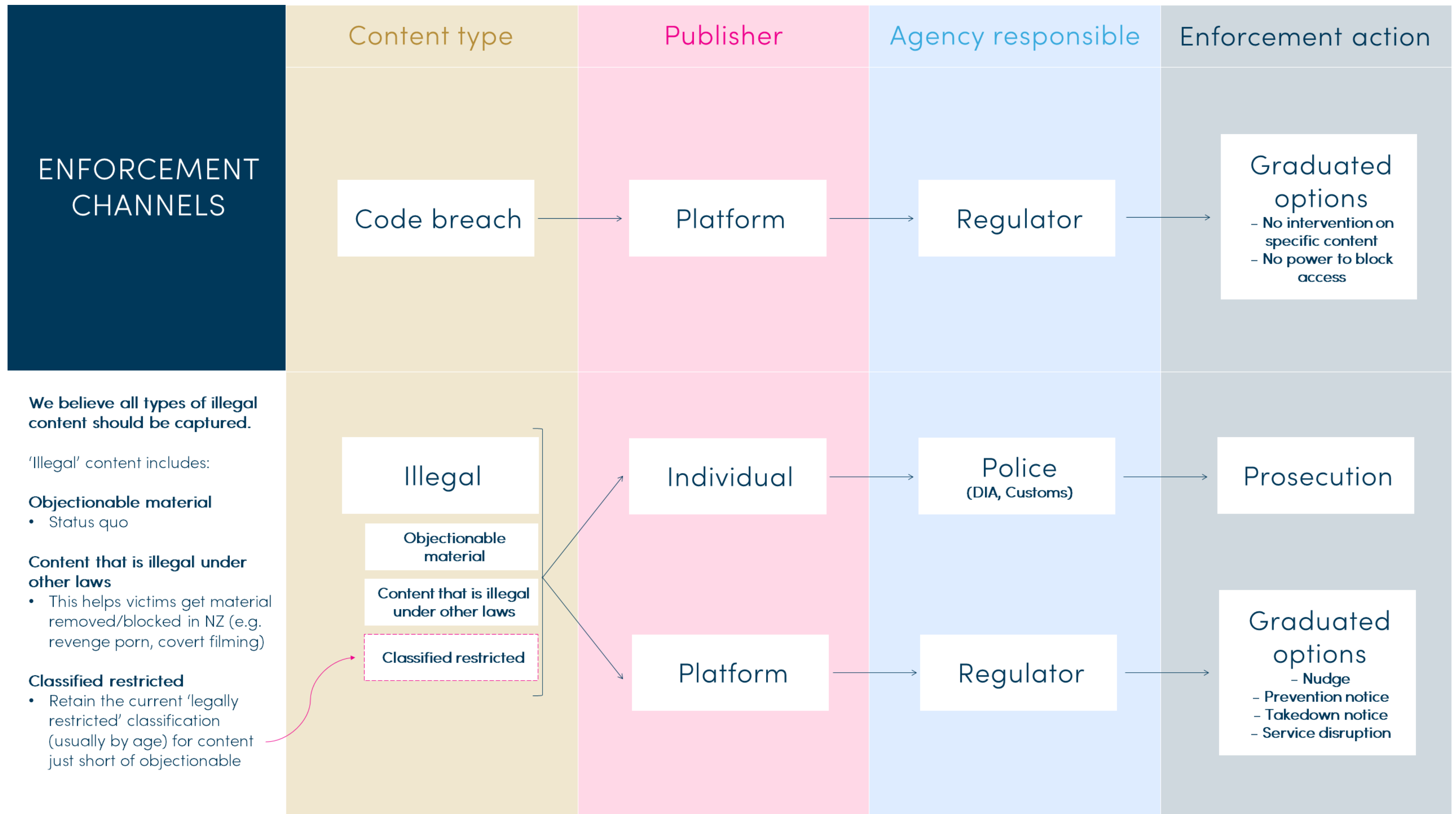
We summarise in the chart below where we believe some entities would sit in the proposed framework, noting that this would only reflect a portion of the whole system as proposed:

---

13 OFLC 2100212.004 *FB_IMG_1594179847799.jpg* (4 August 2021); OFLC 2100212.005 *FB_IMG_1594201517376.jpg* (4 August 2021).

14 See David Fisher "The Real News: Who is really behind the Covid-19 conspiracy magazine being dropped into 60,000 letterboxes" *The New Zealand Herald* (online ed, Auckland, 12 March 2021).

15 See our response to question 21.


ENFORCEMENT CHANNELS
Content type
Publisher
Agency responsible
Enforcement action
Code breach
Platform
Regulator
Graduated options
– No intervention on specific content
– No power to block access
Illegal
Objectionable material
Content that is illegal under other laws
Classified restricted
Individual
Police
(DIA, Customs)
Prosecution
Platform
Regulator
Graduated options
– Nudge
– Prevention notice
– Takedown notice
– Service disruption
We believe all types of illegal content should be captured.
'Illegal' content includes:
Objectionable material
• Status quo
Content that is illegal under other laws
• This helps victims get material removed/blocked in NZ (e.g. revenge porn, covert filming)
Classified restricted
• Retain the current 'legally restricted' classification (usually by age) for content just short of objectionable

We provide further details on our view of the roles and responsibilities of these entities in response to questions 12–20.

There does, however, need to be much more clarity on how exactly the system would work as a whole. We would specifically like to see more details on how the following would fit in with the proposals and interact with each other:

a. Parliament, for example setting minimum expectations in legislation;[16]

b. government, including responsible Ministers;[17]

c. government agencies, for example monitoring the regulator and providing policy advice;[18]

d. the regulator;[19]

e. other agencies that deal with content under related regulatory schemes;[20]

f. the censor;[21]

g. enforcement agencies, for both code breaches and prosecution of individuals, for example for possessing or sharing objectionable content;[22] and

h. industry bodies.[23]

It will be important to keep the regulation of content providers, censorship of specific content, and criminal enforcement for illegal content distinct.[24] Institutional independence must be maximised throughout the content regulatory system for it to work with integrity and maintain the trust of New Zealanders.

If the regulator were to be an independent Crown entity, it would have the same level of institutional independence, and ability to make independent decisions, as the Classification Office and Broadcasting Standards Authority currently have. This would fully realise the level of independence proposed for the regulator.[25]

---

16 See our responses to questions 4, 5, 7, and 25.
17 See our response to question 22.
18 See our response to question 22.
19 See the discussion below in this response.
20 See our responses to questions 7 and 21.
21 See the discussion below in this response.
22 See our responses to questions 15, 18, and 22.
23 See our response to question 8.
24 Discussion document, above n 1, at [77]–[78] and the proposal for a statutory officer at [94].
25 At [26], [29], [133], and especially [152].

Classification of specific pieces of content, and censorship of objectionable content, must remain part of the regulatory system.[26] We have considered key principles that underlie a successful censorship function and have weighed the institutional options proposed,[27] along with two others, against these principles.

	Independent decision-making	Expertise & familiarity with content	Clear processes & outcomes	Can handle volumes of content	Ability to engage with the sector	Cost-effective
Regulator itself (chief executive and/or others)	✗	✓	✗	✓	✓	✓
Statutory office within/adjacent to regulator	✓ *	✓	✓	✓	✓	✓
Panel, board, or tribunal (& secretariat)	✓	✗	✓	✗	✗	✗
Its own Crown entity (not part of regulator)	✓	✓	✓	✓	✓	✗
Hosted by (but not part of) department	✗	✓	✗	✗	✗	✓

* With safeguards, such as statutory protections for independence from the regulator.[28]

As indicated above, the strongest option in our view would be for the censor to be a statutory officer within, or adjacent to, the regulator, with independence from the regulator's functions.[29] The censor could hold or lead an office that is administered by, but operates separately from, the regulator.[28]

Classification of specific pieces of content is not likely to be undertaken by a tribunal or panel in a timely manner.[30] This model could allow community representation and bring a range of expertise and experience, but we would expect this to be applied for review or appellate purposes rather than for the initial examination of content.[31]

Our least favoured option would be for the chief executive of the regulator to have censorship powers,[32] whether as a function of that office or in the performance of a statutory role that is held concurrently, but exercised separately to, the role of chief executive. Although this would maintain separation from prosecution decisions, it would be far too close to the regulation of content

---

26 At [90].
27 At [94].
28 We believe the relationship between the office of the censor and the regulator should be the same kind as between the Office of Human Rights Proceedings and the Human Rights Commission: see Human Rights Act 1993, section 20. This would balance systemic efficiency with functional independence.
29 See discussion document, above n 1, at [94] and [136].
30 See [94].
31 See our response to question 20 for one example of where we believe a panel or board could operate.
32 See discussion document, above n 1, at [94].

providers generally to be sufficiently independent. Even the perception of a lack of independence between system monitoring and code compliance on the one hand, and censorship on the other, may threaten the integrity of the entire framework.

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 of the discussion document)

Yes. Minimum standards and core safety objectives should be placed in primary legislation. These will need to shape the entire content regulatory framework, spanning different types of services and technologies as well as different industry sectors and areas of government.

Setting broad standards and objectives in primary legislation would not only shape the rest of the system with consistent objectives and expectations, but also give the foundation of the system the democratic mandate it requires.

The particular standards and objectives contained in legislation must set out, at a general level, who is to be protected, and what from. We would expect that, as in the Republic of Ireland and in the United Kingdom, children and young people will be specifically provided for as a core group of New Zealanders to be protected from content harms, especially online content.[33] The effects of harmful content are amplified among young people, sometimes with tragic consequences.[34] Provisions also need to be made for other groups at high risk of content harms, including Māori and women.[35]

Evidence shows that there are some types of harm that warrant safety measures across the board.[36] The objectives and expectations of the system need to at least capture these, and include existing measures, such as for suicide and self-harm

---

[33] Online Safety Bill 2023 (HL Bill 164) (UK), clause 12; Broadcasting Act 2009 (Ireland), section 139K(2)(d).

[34] See a recent advisory report by the US Surgeon General *Social Media and Youth Mental Health* (2023) at 8, citing Clare Dyer "'Social media content contributed to teenager's death "in more than a minimal way,' says coroner" (2022) 379 BMJ 2374 regarding recommendations made around online content following the inquest into the death of Molly Russell in the United Kingdom. Research commissioned by the Broadcasting Standards Authority and conducted by The Collaborative Trust has shown that children and young people's general levels of emotional and intellectual development and maturity leave them disproportionately susceptible to harm: The Collaborative Trust *Literature Review: Impacts on Children and Young People of Exposure to Nudity on Television and Other Media* (May 2019) at 25. See also the US Surgeon General's report at 15 for recommendations for policymakers in this area.

[35] The Australian eSafety Commissioner identifies "LGBTIQ+ individuals, people with a disability, or people from a culturally and linguistically diverse background": eSafety Commissioner "How the Online Safety Act supports those most at risk" <https://www.esafety.gov.au/communities/how-online-safety-act-protects-those-most-at-risk>. See our response to question 24 for our view on how the proposals cater for content harms for Māori.

[36] See our response to question 3.

content.[37] Primary legislation must address the risks that New Zealanders face from content harms, including those covered in current legislation,[38] but also be informed by how this has been achieved overseas.

General types of harmful content should also be described, but not exhaustively defined, in primary legislation. These could include types of content not covered in current legislation; for example, online bullying or humiliation, harassment, threats, pornography, mis- and dis-information, and content that promotes or encourages behaviours associated with eating disorders or suicide.[39]

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 of the discussion document)

We believe a clear definition of who or what qualifies as a "platform" is fundamental to the success of the proposals.[40] This must be set out in primary legislation to provide a baseline definition of who and what the content regulatory system applies to, whether in Aotearoa or globally (in a similar way to how "publication" is defined under our current Act).[41]

We are particularly concerned about how effectively harmful content, such as websites that promote and support self-harm and suicide, would be regulated.[42] Although many of these are small operations, the proportion of their total content that would be illegal or restricted in New Zealand under the current legislative tests is significantly higher than that of other platforms.

There is a large number of such websites that feature or share extremely harmful content, such as content promoting violent extremism which has been banned in New Zealand. Sites featuring rape pornography or bestiality – much of which is objectionable – are also easily accessible and not currently regulated effectively.

The regulator must therefore have powers to designate platforms or services as being subject to a new or existing code. This would be vital for those providers that do not naturally fit within an existing code of practice but which pose a

---

37 Films, Videos, and Publications Classification Act, section 3B
38 See sections 3–3B.
39 See for example Broadcasting Act (Ireland), schedule 3 ("Harmful Online Content: Offence-Specific Categories").
40 Building on the starting point in the discussion document, above n 1, at [31].
41 Films, Videos, and Publications Classification Act, section 2 definition of "publication". This definition must be retained to run alongside the definition of "platform", so that individuals can remain liable for criminal offences. What a "publication" is may also provide part of the basis for defining who or what a "platform" is, to the extent that they deal with publications.
42 See our response to question 15 for an example of one particularly problematic website we are aware of in this space.

sufficient level of risk of harm to New Zealanders. A default standard or code, perhaps expressed in much broader terms than those developed by industry. This may go some way to addressing issues with providers who do not naturally fit within industry or code-based groupings but which need to be subject to the content regulatory system. This significant discretionary power would require clear legislative guidance or boundaries outlining who or what can be considered a "platform", and in which circumstances the regulator may use its designation powers.

A clear baseline definition would therefore not only determine who or what codes of practice could apply to, but would also allow action to be taken against those who persistently fail to comply with New Zealand law,[43] regardless of whether they are subject to a code.[44] Without this definition, it would be difficult for the regulator to be able to use its designation powers with platforms and service that supplied content which is illegal in Aotearoa.

Even with a baseline definition however, many of these providers will fail to engage with the regulatory process. Appropriate policies and resourcing would be required to make sure that the regulator can properly use the powers it has where they are most needed, and not reacting to content risks only once those risks have already been realised.

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 of the discussion document)

The proposals cover a large proportion of suppliers of content, such as social media platforms and terrestrial broadcasters. We would like to see further details on how a platform or service's "audience" will be defined, and whether this definition would be consistently applied between and within codes of practice. There is still potential ambiguity around whether a platform or service is "likely" to achieve one or more of the criteria.[45]

Much of the proposed regulatory system would hinge on whether these criteria are met or "likely" to be met. Accordingly, this part of the system needs to be flexible while also not imposing undue burdens or uncertainty on platforms and services.

---

[43] See our response to question 15 for our view on the types of actions that should be available.

[44] This baseline definition should include exceptions for certain types of entities, such as those proposed to be exempt from codes of practice: see discussion document, above n 1, at [32]. This would allow these entities to be totally exempt from civil enforcement action within the content regulatory framework, but still liable to criminal prosecution.

[45] At [32].

We acknowledge that it is unlikely that an accurate and comparable measure of audience share can be used in some industries or categories of service. However, we are mindful that even a suitable proxy may be difficult to develop or agree on.[46]

7. Do you think we have covered all core requirements needed for codes of practice?
(Page 39 of the discussion document)

The discussion document sets out a good starting point for the types of processes that platforms and services will be required to follow. We would encourage looking at which standards, objectives, and processes have been proposed or have worked well in other countries.

The examples in the discussion document of the types of measures that may feature in codes of practice[47] will need to be non-exhaustive so that new and emerging technologies can become part of the content regulatory framework. They may need to be defined or described with technical or specialist expertise. Accordingly, these measures may be best defined or described in regulations, with proven solutions included in primary legislation (as minimum measures that the regulations must contain).[48]

If online services are required to identify and/or remove harmful content, codes of practice should be neutral as to whether, and to what extent, a supplier of content undertakes this themselves, or whether a third party does – as long as the supplier is complying with the code overall.

The complaints system must be seamless for consumers. This would significantly benefit platforms and services, the regulator, and New Zealanders themselves in knowing which issues are arising within the system. There are also clear benefits for consumers themselves in making complaints mechanisms clear and

---

46 For online services, an "audience" could be made up of webpage views, website sessions, link clicks, or other metrics, either on their own or in combination. This information would not only need to be obtained and used responsibly by the regulator (see our response to question 7), but also be subject to requirements that do not cause unnecessary prejudice or division between platforms and services. For example, although the information that a platform supplies to the regulator would not be publicly available, the fact that a platform is or is not covered by a relevant code may allow inferences to be drawn about the range that the platform's (commercially sensitive) metrics fall into.

47 Discussion document, above n 1, at [51]–[52].

48 Regulations passed for this purpose would not need to be nearly as prescriptive as the current regulations. For example, classification regulations are currently highly industry-specific. In our view, any parts of these regulations that were retained under the proposed framework should instead be included in codes of practice: see generally Films, Videos, and Publications Classification Regulations 1994.

accessible,[49] and having them deliver reasonable results. This would save time and allow New Zealanders to be and feel heard.[50]

Current complaints systems are numerous, fragmented, and difficult for consumers to access. We are concerned that the proposals do not appear to make it any easier for consumers to make complaints about the content that is affecting them. For example, complaints about harassment or scams are dealt with separately from content complaints, even though they appear to, or in fact have, significant overlap. This makes it difficult for consumers (and often agencies themselves) to define the particular issues raised by content, even if they know where they can take those concerns. We do not believe it is reasonable to continue to leave this to consumers.

Platforms, services and/or the regulator itself should be required to:

a. make themselves available for contact from the public;

b. respond meaningfully to all consumer complaints;[51]

c. set out clear and consistent information about how to report or 'flag' content on each platform or service,[52] how to make and appeal a complaint,[53] and about the rights consumers have around the content they are supplied with; and

d. regularly report on complaints about their services.

Platforms should be required, as part of routine compliance, to supply data about complaints to the regulator. This will inform the regulator about how well the platform is complying with their obligations under codes of practice, and where issues may exist within the system. The regulator in turn should be required to publicly report on complaints data overall.

Like with existing codes of practice, some new codes may set out part of the overall process for handling complaints and enquiries about a particular type of content. For example, a broadcasting code may require broadcasters to provide the initial response to consumer complaints, with the regulator only triaging (if not

---

[49] Discussion document, above n 1, at [52].

[50] See our response to question 21 for how we believe public agencies, as opposed to platforms and services, should handle complaints and enquiries from consumers.

[51] See for example Social Media Services Online Safety Code (Class 1A and Class 1B Material) 2023 (Australia), clause 26.

[52] Clause 23.

[53] Clause 21.

responding to) complaints and enquiries at a review or appellate level where the consumer is not satisfied with the broadcaster's response.[54]

Other new codes may not set out any process for handling complaints and enquiries, in which case the regulator may be required to triage (if not respond to) all of them by default. The complaints system overall must also extend beyond codes of practice to the extent that agencies other than the regulator, or platforms themselves, will have a role in dealing with specific types of issues.[55]

8. What types of codes and industry groupings do you think should be grouped together?
(Page 39 of the discussion document)

We do not have a firm view on which codes should exist or how industries should be grouped.

However, we do not however believe that groupings should be set out in legislation. These will inevitability change and grow over time, as we have seen with the application of the Classification Act to online content. Groupings must be responsive to changes in markets and technologies, which may be rapid.

9. Do you think some types of platforms should be looked at more closely, depending on the type of content they have?
(Page 39 of the discussion document)

New Zealand's content regulatory system will only be effective if it responds well to the harms that arise from online services. Our experience has been that, even putting aside social media and other popular online platforms, a very small proportion of websites pose a disproportionately higher level of risk to New Zealanders than others.

We would emphasise that content harms both online and offline need to be covered effectively. "Platforms", as defined in the proposals, would cover not only providers of content online but also more traditional providers such as cinemas. Although codes of practice would cover the details, the system overall needs to be able to cater for, and respond to, harms arising in different contexts.

---

[54] This is essentially how we understand complaints about broadcasts are currently dealt with: see Broadcasting Act 1989, section 5.

[55] See our response to question 21.

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 of the discussion document)

It is not immediately clear how the proposed system will regulate online pornography. We are particularly mindful of the reluctance so far on the part of providers to set industry standards, and the need for legislative solutions to impose standards on industry.[56] This is despite clear evidence that young people are accessing these services, often unintentionally.

The current content regulatory system, and any measures taken by industry, are clearly not working to limit children and young people's access to pornography. Our 2018 research surveyed over 2000 young people and found that 71% of 14–17-year-olds thought access to online porn should be restricted in some way.[57] 67% had seen porn, and 27% first saw porn by age 12.[58] 89% believed that it is not okay for children to look at porn.[59] Further, most young people are not seeking out porn when they first see it. Of those who had ever seen porn, 37% first saw it by accident, and 34% were shown it by someone else.[60]

We are concerned that the proposed system would have no clear way of addressing harms that arise from services or situations that may not be considered to be part of any particular 'industry'. The regulator will need to consider how codes and/or the wider content regulatory system can be best applied to such services. For example, our current platform-agnostic system allows us to classify content regardless of where it is, who is responsible for it, and whether it can be moved or copied.[61] These are benefits that should be retained in the proposed system as much as is possible.

Under the current classification system, we can classify a variety of publications as restricted or objectionable outside of online content and traditional commercial content like films. Examples include three Wicked Camper vans, which were

---

56 Other countries, such as the United Kingdom, are looking at measures to limit children and young people's access to online pornography, which may include requirements for age verification technology.

57 Te Mana Whakaatu—Classification Office *NZ Youth and Porn: Research findings of a survey on how and why young New Zealanders view online pornography* (December 2018) at 55.

58 At 22.

59 At 53.

60 At 27. Compare Te Mana Whakaatu—Classification Office, above n 9, at 32.

61 Consider for example a pornographic mural. This may well be restricted or even banned under the current system, but could be difficult or impossible to regulate under the proposed system. There would be a risk of publications like posters and signs falling through the cracks – with no platform, service or wider industry to attach to them – if the regulatory system were to be too narrowly predicated on platforms and supply or ownership of content. Such publications are just as capable of containing harmful and illegal content as other media are.

classified R16 for promoting the use of illegal drugs,[62] and a t-shirt which was classified R18 due to its highly offensive language and sexual material.[63]

The content regulatory system will also need to clearly set out responsibilities for content, especially illegal content, which is promoted or distributed principally via artificial intelligence (AI). The system may need to look beyond traditional concepts of "suppliers" or "publishers" in order to carve out responsibility, and possibly liability, for content that is promoted or distributed without substantial human input. This will bring into focus the importance of requiring algorithms to be as bounded, transparent, and amenable to change as is reasonable and practicable. Retaining the ability to censor specific pieces of content will not only complement the regulator's functions and help consumers, but also help platforms that host AI-generated content, who may not wish to host the worst of it.

It will be essential for the regulator to be kept informed about how AI operates within the regulatory system. Regular reporting would partly achieve this; the regulator should also have powers to require platforms and services to supply this information. Care will be needed around the scope and purpose of this, perhaps being limited to recourse for deficient or non-compliant reporting.

11. What do you think about the different approaches we could take, including the supportive and prescriptive alternatives?
(Page 43 of the discussion document)

These are not mutually exclusive approaches. Some aspects of the content regulatory system should be prescriptive, especially where equity and consistency are needed. Other aspects should be supportive, such as where different content providers require different balances to be struck between their efforts to uphold regulatory requirements in Aotearoa and (increasingly) in other countries.

12. Do you think that the proposed model of enforcing codes of practice would work?
(Page 48 of the discussion document)

Yes. We have been following the development and implementation of this type of model overseas, and we believe they would be suitable in Aotearoa. Code-based approaches already exist for parts of the sector; for example, for broadcasting.

---

62 OFLC 1700235.000 *Wicked Camper EFH750* (14 July 2017); OFLC 1700236.000 *Wicked Camper GCT784* (14 July 2017); OFLC 1700237.000 *Wicked Camper HZN623* (14 July 2017). These decisions meant it was illegal to display the vans in public where people under 16 could view them.

63 OFLC 2000089.000 *Vestal Masturbation (Cradle of Filth T-Shirt)* (25 May 2020).

We note our positive experience in implementing legislative requirements for commercial video on-demand (CVoD) content.[64] CVoD content providers have responded well to the requirements. Our assessment of the ability of each provider to set suitable age ratings and content warnings has been largely positive, and we have seen consistently low levels of consumer complaints about CVoD content. The fact that some content providers are large companies based offshore does not mean that New Zealand cannot have an effective and robust content regulatory system. Self-classification models are being introduced in other countries,[65] and not just for CVoD content.[66]

Although we expect many content providers will respond effectively and in good faith to the proposed framework, the regulator must cultivate strong and constructive working relationships with providers. Aotearoa is small. We therefore need to see clear responsibility for holding relationships with major platforms in order to get results for New Zealanders. The proposals assume this will be the regulator, but it appears that major platforms would still also have direct relationships with initiatives like the Christchurch Call and the agency approved to deal with harmful digital communications.[67]

The importance of these working relationships means that it would be inappropriate for the regulator to also be the censor. Enforcement action would also need to be clearly delineated within the system. For example, the regulator's departmental monitor should be a different agency to that carrying out criminal prosecutions.[68]

13. Do you think the regulator would have sufficient powers to effectively oversee the framework? Why/why not?
(Page 48 of the discussion document)

We touch on this point in our responses to other questions.

---

[64] See Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020.

[65] See for example Hon Michelle Rowland "Next step in modernising Australia's Classification Scheme" (press release, 22 June 2023); and British Board of Film Classification "BBFC and Prime Video take next step in content partnership" (press release, 7 March 2023).

[66] Medietilsynet (Norwegian Media Authority) via NTB Kommunikasjon "Now the age limits at the cinema are set by the distributors" (press release, translated, 2 January 2023).

[67] See our response to question 21.

[68] See our response to question 22.

14. Do you agree that the regulator's enforcement powers should be limited to civil liability actions?
(Page 48 of the discussion document)

Yes. We expand on this point in our response to question 17.

15. How do you think the system should respond to persistent non-compliance?
(Page 48 of the discussion document)

Under the current content regulatory system, New Zealanders cannot be prevented from accessing most objectionable content, even if that content has been classified and been made subject to a takedown notice.[69] Suppliers of that content may simply ignore takedown notices. Our enforcement agencies would need to work with overseas counterparts to try to get these notices followed.

This is an unusual gap in enforcement powers given content on the internet has global reach. Our regulatory system should at least be able to 'close borders' where content is plainly illegal in New Zealand. There are two main reasons for this: this content is harmful to New Zealanders; and access to this content may criminalise New Zealanders, so blocking it would prevent criminality.

Nevertheless, we expect some platforms and services will fail to comply with any content regulatory system, whether by failing to follow codes of practice and/or by hosting objectionable material. A range of mechanisms need to be available to the regulator to make sure platforms and services follow the law.[70] We focus below only on key enforcement measures concerning illegal content; however, we support the other measures proposed, such as private and public warnings to content providers,[71] and financial penalties.[72]

Both regulated and non-regulated platforms and services that persistently fail to follow New Zealand law, such as repeatedly or continuously committing criminal offences, should be liable to civil enforcement actions such as takedown and prevention notices.[73]

---

69 An exception is the Digital Child Exploitation Filtering System (DCEFS): see Department of Internal Affairs "Digital Child Exploitation Filtering System" (2021) <https://www.dia.govt.nz/Preventing-Online-Child-Sexual-Exploitation-Digital-Child-Exploitation-Filtering-System>; and the discussion on service disruption orders below in this response.

70 Discussion document, above n 1, at [76].

71 At [73]. We note the similarity between these measures and those found in other regulatory systems, and would encourage exploring how effective those and other measures are in those contexts: see for example Anti-Money Laundering and Countering Financing of Terrorism Act 2009, sections 80–83.

72 Discussion document, above n 1, at [109].

73 See our response to question 5 for how and why we believe non-regulated platforms should be subject to enforcement action.

We note that the discussion document suggests that criminal sanctions include takedown powers.[74] We believe they would best be characterised as civil enforcement measures that respond to illegality, but do not deal directly with particular illegal conduct. This would remain the responsibility of agencies who enforce the criminal law.

We outline here how we believe three key enforcement measures should respond to non-compliance throughout the system. These largely follow the proposals in the discussion document, and we recommend one change.

A prevention notice would require specific content to be blocked in New Zealand

The takedown powers currently available under the Classification Act,[75] and the takedown powers set out in the proposals,[76] allow content providers issued with a takedown notice to comply with the notice by preventing access to illegal content within New Zealand. This provides an alternative to complete removal of the content from the platform or service, which may incentivise compliance.

We would support the continued availability of these alternatives under the proposed framework. However, we recommend changing the name of this measure to a “prevention notice”. This would make it clearer to platforms and services issued with these notices, particularly those based offshore, that full removal of content is sufficient, but not necessary, to comply with a notice. In short, prevention notices would resemble what takedown notices are under the current Act.

Importantly, this would allow the regulator to insist on full removal of illegal content in appropriate situations. They could do this by issuing another type of notice, more accurately termed a “takedown notice”. The regulator may be required to meet different criteria before being able to issue each type of notice, and/or be required to conduct a risk assessment within a specified timeframe as to which type of notice should be issued.

A takedown notice would require specific content to be removed from a service

In some instances, the regulator should be able to insist on illegal content being completely removed from a platform or service. This would be necessary for illegal content provided by an entity based, or with a corporate presence, in

[74] Discussion document, above n 1, at [85].
[75] Films, Videos, and Publications Classification Act, section 119D(1)(c).
[76] Discussion document, above n 1, at [102].

Aotearoa, and/or for illegal content where there is a clear interest in the regulator being justified in insisting on removal.[77]

Both prevention and takedown notices should be enforceable by the courts,[78] at least when they apply to platforms and services with a corporate presence in Aotearoa.

A service disruption order would block all or part of a service in New Zealand

In failing to comply with takedown or prevention notices, or other enforcement measures, platforms and services that make objectionable content available should not be able to continue to make that content available to New Zealanders.

We support the proposal to introduce service disruption orders into the content regulatory framework.[79] We agree that these orders should only be granted by the courts.[80] The regulator should be the only agency with the power to make applications for these orders. They should be a last resort, following only after the exhaustion of other enforcement options, and should not be limited to content providers that have a corporate presence in Aotearoa.[81] However, applications should be available without notice to the provider, given the steps the regulator must take before an application can be made.

These applications would need to be expedited within the court system. They should be dealt with on the papers wherever possible, with any hearings scheduled urgently. Government agencies, civil society groups, community groups, and others should be allowed to appear as intervening parties if approved by the court. The court should be able to decide whether to grant a permanent order or only set an order for a limited period of time, after considering the period (if any) that the regulator has applied to have the order set for. Primary legislation may also require the court to consider other factors. The District Court may be the most appropriate body to deal with these applications,[82]

---

77 Relevant interests to be assessed could include the likelihood of compliance with one or other type of notice; whether the rights or interests of any individual would be better realised by issuing one or other type of notice (such as the rights of any victims); and whether the regulator has received relevant information from other agencies, including international agencies, regarding the same content. See for example our response to question 25 for how we believe victims' rights fit with the role of the regulator.

78 See Films, Videos, and Publications Classification Act, section 119H for current enforcement provisions for takedown notices.

79 Discussion document, above n 1, at [82].

80 At [82].

81 At 49. See our response to question 5 for our view on the need for a baseline definition for content providers, which would enable enforcement action to be taken in some circumstances beyond the scope of codes of practice.

82 This would be consistent with proceedings brought for harmful digital communications: Harmful Digital Communications Act 2015, section 11.

with a limited right of appeal to the High Court. The process must be swift but fair.

Where a service disruption order is granted, it should be provided to every internet service provider (ISP) in New Zealand. It should require each ISP to block access to particular content, or to part or all of a platform or service, within New Zealand. This should achieve the same result as that intended by a prevention notice, only handled by ISPs instead of the platform or service themselves. This could be achieved by ISPs adding content or content providers to the DCEFS according to the terms of each order the courts grant.[83] Other mechanisms may however work better for ISPs, collectively or individually.

We conclude here with an example. We are aware of a particular website that hosts a discussion forum where individuals primarily post about rationalisations for, and ways of, committing suicide, including detailed methods and instructions.[84] This website, which is based offshore, has been operating for around five years. We know this website is being accessed in Aotearoa. The operators of the website have been issued with a takedown notice under the Classification Act. The operators appear to have taken no action in response. New Zealanders remain free to access this content, while suicide rates remain very high relative to other countries, particularly among youth.[85] Some may use this content to take their own lives. The regulatory system currently provides no way to stop this content from being accessed when providers fail to act in the interests of New Zealanders. That must change.

Enforcement powers could address persistent non-compliance in a range of ways

We agree with the proposal to allow the regulator to explore the use of voluntary filter systems.[86] However, these should be treated as supplementing service disruption orders, rather than being a complete replacement for them.

Our view is the full range of civil enforcement powers should be available for content the censor has determined to be age-restricted in New Zealand. This includes pornography and content depicting extreme violence that falls short of the threshold of being banned.[87] All age-restricted content should be subject to specific controls and warnings. This content would be illegal if it is specifically classified as age-restricted by the censor and could be readily accessed by rangatahi within New Zealand. We do not believe this should justify any less of an enforcement response than content that is banned for all New Zealanders. We

83 For details on the DCEFS, see Department of Internal Affairs, above n 69.
84 We have decided to withhold the name of the website, but can provide further details on request.
85 Organisation for Economic Co-Operation and Development "CO4.4: Teenage suicides (15–19 years old)" (17 October 2017) <www.oecd.org/els/family/CO_4_4_Teenage-Suicide.pdf> at 2.
86 Discussion document, above n 1, at [104]–[105].
87 See our response to question 16.

emphasise that these powers should only be available for specific pieces of content, not categories of content.

We would encourage further discussion as to whether the measures that could be taken in these circumstances, especially by enforcement agencies for criminal offending, would be effective and practicable. We would also welcome the opportunity to take the Department through some detailed case studies to illustrate the types of content we believe should be subject to these powers.

16. What are your views on transferring the current approach of determining illegal material into the new framework?
(Page 54 of the discussion document)

The legal definition of banned content in Aotearoa has largely stood the test of time.[88] Some aspects of the section 3 test for objectionability are outdated,[89] and these only tend to apply to content that meets other criteria under section 3 anyway. Nevertheless, if these aspects are still deemed to be objectionable, platforms that host user-generated pornography may face significant compliance issues. We would otherwise support keeping the definition from section 3 unchanged.[90]

We do not support ceasing all legally enforceable restrictions on content.[91] We would find the lack of legally enforceable restrictions particularly problematic when the censorship function[92] is required to make decisions about borderline content. We would see clear issues if the censor was only able to classify content as completely illegal, or completely legal, for New Zealanders of any age to access.

This is best illustrated by the experience of our classification team. Our experts often deal with content that, if they did not have the ability to restrict, they would be required by law to ban outright. Compared to this scenario, which we believe the censor would frequently be confronted with in the proposed framework, restrictions do not impede freedom of expression, but instead maximise it.[93] Limited, controlled, and responsible access to some content is generally better for society than not allowing any lawful access to that content at all.

---

88 See Films, Videos, and Publications Classification Act, section 3.
89 See section 3(2)(d). This is the only type of content that is deemed objectionable, and one of the few types of content in section 3 overall, which is illegal to depict in a publication but not illegal to do.
90 Discussion document, above n 1, at [90].
91 At [96].
92 At [90] and [93]. See also our response to question 3.
93 See our response to question 25 for how we believe freedom of expression would interact with other rights in the proposed framework.

Considering also the much more limited (but no less important) role that formal classification of content would have in the proposed framework, the power to set legally enforceable restrictions for content would be a sensible and reasonable compromise between allowing or banning access to it. We believe the choice to restrict should only arise for extreme content that raises specific harms for young New Zealanders, but also where there are strong reasons why older New Zealanders, including adults, should be able to legally access it (with appropriate content warnings). This would balance access with a precautionary approach.[94]

It is worth remembering that legal restrictions are conditional bans. Restricted content is objectionable unless specific conditions are met.[95] Restricted content is subject to the same set of legal criteria as content that is banned.[96] The ability for the censor to set these conditions needs to be retained for content that meets enough of these same criteria. This content, while not as widely available as other content, poses a high risk of harm to New Zealanders, if it falls short of the threshold for being banned. We strongly believe this class of content needs to be treated as being banned except under specific conditions, as provided for by the current Act.

Ceasing legal restrictions would make it legal for anyone in New Zealand to show, display, or otherwise make available material like pornography to a child.[97] Disturbing publications that can cause significant harm would be more easily accessible to children and young people. This includes publications depicting beheadings,[98] machete attacks,[99] suicides,[100] and publications spreading extremely harmful conspiratorial narratives[101] – all of which are currently restricted to people aged 18 and above. Accessing such publications would be shocking and

---

94 The Chief Medical Officers for England, Wales and Scotland have advocated for a precautionary approach to protecting children from harmful content: *United Kingdom Chief Medical Officers' Commentary on 'Screen-based activities and children and young people's mental health and psychosocial wellbeing: a systematic map of reviews'* (7 February 2019).

95 Films, Videos, and Publications Classification Act, section 2 definition of "restricted publication"; and section 23(2)(c). Age restrictions are only one type of restriction. Restrictions by persons, classes of persons, and purpose are also available under subsection (2)(c)(ii)–(iii). Restrictions which are not based on age are the most restrictive provisions of the Act, short of banning the content. We only apply these provisions for content that poses the highest risk, but where very limited availability is justified, usually only to owners of those publications or classes of persons who should have access to the content for professional purposes. This would not be possible under the proposals.

96 Section 23(2).

97 See sections 125–126.

98 OFLC 2000392.000 *Paris Beheading - screenshot of original post* (31 May 2021); OFLC 2000392.001 *Paris Beheading (image only)* (31 May 2021); OFLC 2000392.003 *PARIS_Muslim terrorist shouting "Allahu Akbar" BEHEADS teacher who showed cartoons of Prophet Mohammed to his students* (31 May 2021); OFLC 2000392.008 *Some random guy beheads another random guy in Paris* (31 May 2021).

99 OFLC 2200014.000 *Machete attack video (Publication 1)* (8 April 2022); OFLC 2200014.001 *Machete attack video (Publication 4)* (8 April 2022).

100 OFLC 2000163.000 *1X.mp4* (23 July 2020).

101 OFLC 1900393.000 *News Wars: Christchurch Used to Silence Questioning on Global Scale* (18 October 2019); and OFLC 2000109.000, above n 7.

distressing for children and young people, who can find it challenging to separate themselves from the content they see and comprehend the context in which it is presented. By maintaining legal restrictions, we can help protect young people from harmful material and create a safer environment for them.

We note that "prosecutions are rare for people who exhibit and supply [restricted] content to underage people".[102] In our view, this is evidence that legal restrictions work. An option to explore could be retaining offences that currently exist, or developing other legal safeguards, for children and young people, but with forms of penalty other than the high fines and long maximum sentences (not to mention criminal convictions) currently attached to these offences.

It would no longer be necessary to place legally enforceable restrictions on the wide range of content they currently appear on, such as commercial films, where code-based requirements were in force instead.[103] We support the proposal for consumer information on commercial content to become recommendations set in accordance with codes of practice, and required by contractual obligations.[104] This has proved to work well for commercial video on-demand (CVoD) content.[105] We believe this has set a good example for providers of other content to follow.[106]

Distributors or publishers of commercial content may wish to refer content to the censor for their expert opinion on whether especially graphic content could be made available.[107] Content providers should not be left to fend for themselves when deciding how to deal with individual publications, given the regulator would only deal with platforms, services, and the system as a whole, but not individual pieces of content.

The censor should however also retain the power to classify specific content on their own motion, with all content providers required to follow the outcomes of that process.[108] As with the current system, this power should only sit 'in reserve' for situations in which it is absolutely necessary to use.[109] For example, it may be appropriate to use this power to provide legal protections for young people where extreme content is unlikely to be captured by codes of practice, including where it

---

102 Discussion document, above n 1, at [97].

103 At [96].

104 At [96].

105 See our response to question 12.

106 See discussion document, above n 1, at [98]: "platforms … would take full responsibility for consumer advice". However, we do think that "support from the regulator" would, in the exceptional circumstances described above, involve setting legally enforceable age restrictions.

107 There would be less incentive for platforms and services to seek this expert opinion, and thus inform their own content regulation efforts, if the censor could only ban, but not restrict, highly graphic content.

108 See Films, Videos, and Publications Classification Act, section 13(3).

109 Only 0.47% of registered classifications in 2021/22 were for publications received via section 13(3): Te Mana Whakaatu—Classification Office *Annual Report 2021/22* (18 November 2022) at 41. Most of these were extremist publications, which were banned under the Classification Act.

is being made available by an entity that is not a content provider or platform per se.[110]

17. Should the regulator have powers to undertake criminal prosecutions?
(Page 54 of the discussion document)

No. We believe it would be highly problematic if all platforms and services were exposed to criminal liability based on standards they themselves had voluntarily agreed to in codes of practice. We agree with the proposal to not have the regulator undertake criminal prosecutions.[111] However, further clarity is needed on the distinct roles and relationships between the regulator, government agencies, and enforcement agencies in relation to code breaches by platforms, as opposed to enforcement against individuals who handle objectionable or restricted content.[112]

Many types of code-based standards would not map well onto criminal sanctions. For example, we expect New Zealanders would find it unreasonable if the regulator were able to initiate criminal prosecutions against news media outlets that consistently fail to uphold media standards such as balance and fairness. We believe there does need to be a firm response to non-compliance of this kind, but a criminal action in this context would be unsuitable and inappropriate.

The regulator should have a range of civil liability actions to respond to platforms and services that persistently fail to comply with New Zealand laws.[113] Our view is that criminal actions in the content regulatory system should be confined to individual cases of illegality,[114] similar to how these are treated today.

18. Is the regulator the appropriate body to exercise takedown powers?
(Page 56 of the discussion document)

Yes, to an extent. The regulator should be able to take action against individual pieces of content that the censor has determined to be restricted or banned. The regulator should also be able to apply to the courts for service disruption orders when a platform or service has not adequately responded to notices issued to them, and where a high risk of harm to New Zealanders remains.[115]

---

110 See our response to question 5.
111 Discussion document, above n 1, at [77]–[78].
112 See our response to question 3.
113 See our response to question 15.
114 See our response to question 21.
115 See our response to question 15 for our view on the types of actions that should be available.

We agree that the content regulatory system should include types of content that are illegal under other New Zealand laws.[116] To supplement the regulator's takedown and prevention powers, other agencies (including enforcement agencies) could be granted the power to refer illegal content to the regulator for a takedown notice or prevention notice. The regulator may be able to make their own assessment, or be required to defer to the expert assessment of the referring agency, as to whether a notice would be justified.

Alternatively, each of these agencies could be granted the ability to issue takedown or prevention notices for illegal content of this kind, and be required to notify the regulator of this.

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 of the discussion document)

Yes. We believe any content that is illegal under any New Zealand law should not be available in New Zealand. Orders and notices should be available for content that is banned (objectionable), is likely to be banned (including content that may instead be restricted[117]), or is illegal under existing laws.[118] We do not believe that platforms or services should be treated differently depending on the type of illegal conduct they engage in or allow.

In saying that, we would like to see many more details about what enforcement would look like in the content regulatory system, both overall and as regards specific measures.[119] These measures will limit freedom of expression in New Zealand, and although these limits will not be significantly larger than those under our current laws, New Zealanders deserve to know how and when new powers would be used.[120]

We would expect the range of illegal content to only include content that posed a risk of harm to New Zealanders, such that it would have physical or psychological consequences,[121] or in very limited circumstances, posed a serious risk to the public

---

116 Discussion document, above n 1, at [106]. See also our response to question 19.

117 See our response to question 16. A variation on "likely to be banned" may be appropriate: see for example Films, Videos, and Publications Classification Act, section 119C(1)(c) where belief "on reasonable grounds [that the publication] is objectionable" may be sufficient for a takedown notice to be issued.

118 This may include content deemed illegal by operation of law, and content determined to be illegal as the result of a prosecution or statutory process.

119 See our response to question 3.

120 See our response to question 25 for how we believe freedom of expression would interact with other rights in the proposed framework.

121 See for example Crimes Act 1961, section 216G; Harmful Digital Communications Act, section 4 definitions of "intimate visual recording", "digital communication" and "harm". See also Crimes Act, section 306(1)(b) (written threats to kill or do grievous bodily harm to a person). We agree in principle with the

good.[122] We query whether the regulator themselves would be required to issue takedown or prevention notices arising from breaches of codes of practice which cross over with these existing laws, or whether agencies already set up to regulate those laws will also have these powers.[123] This, and the wider separation of roles and powers between the regulator and these other agencies, needs to be clearer.[124]

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 of the discussion document)

Yes. Our experience is that illegal content can spread just as rapidly as any other content. A lot of the harm that illegal content can cause will occur before most legal or other regulatory procedures can run their course. Effective interim measures will allow harm to be curbed when it is most likely to arise.

We are satisfied with how the interim classification process has worked, and how takedown powers currently interact with this process, to the extent that they are effective. Although takedown powers are not a complete solution to the supply of illegal content, we believe they can be improved.[125] Classification of content has become a check and balance against the use of takedown powers. In the proposed system, checks and balances could be extended to reflect the ability of the regulator to take action with wider amounts, and types, of content.

For example, the regulator may be required to issue a takedown or prevention notice only on an interim basis unless specific criteria are met.[126] The regulator may also be required to refer content subject to an interim notice to the censor for formal classification if it has not already been classified. Further, the platform or service could be allowed to apply to the regulator to have an interim notice set aside, whether for specified reasons (including exceptional circumstances) or at the regulator's discretion. These, and other measures, would provide separate

---

proposal to include content that is illegal under consumer protection laws, but only where this content would pose serious risks of physical or psychological consequences, such as unlawful medical-related advertising: discussion document, above n 1, at [108].

122 Statutory and court-ordered name suppression within New Zealand may qualify here, as well as other restrictions such as Coroners Act 2006, section 71.

123 See our response to question 18.

124 See our responses to questions 3 and 21.

125 See our response to question 15.

126 The effects of interim classification assessments under the current Act are time-limited in a similar way: Films, Videos, and Publications Classification Act, section 22B(4)–(6).

steps to mitigate the imposition on free expression that interim notices may have.[127]

We would also encourage some thought on whether interim takedown and prevention notices could be appealed to an appellate or review board. This would provide a further check and balance for platforms and services which do not agree with an assessment by the regulator and/or an enforcement agency. This could be achieved in several ways, but a panel would need to be convened in a timely fashion and have tight statutory criteria to follow to focus their decisions.

We do not believe the permission of the courts would be necessary if these checks and balances were in place.[128] However, they may also of course take appellate and review roles.

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 of the discussion document)

Our view on the roles and responsibilities of public entities in the proposed framework are presented in our response to questions 12–20. We summarise how we believe this part of the content regulatory system should be comprised in the chart in our response to question 3.

A whole-of-society approach to content harm should be taken, where civil society organisations, educators and training bodies have important roles within the proposed framework. These functions need to be resourced and, in some areas, grown.[129] These groups have important contributions to make in grounding the proposals,[130] and their input should be prioritised, such as during the development of codes of practice.[131]

Consistent with its leadership role, we believe the regulator should be required to conduct research, provide information, and maintain public awareness of content

127 See our response to question 25 for our view on rights in the proposed framework.
128 See discussion document, above n 1, at [108].
129 At [125].
130 At [37].
131 See the approach of Australia's eSafety Commissioner in this area, above n 35.

harms and the regulatory system, such as through public campaigns.[132] Civil society organisations, educators, and community groups would remain important partners in fulfilling these functions.

The proposed regulatory scheme overlaps with existing regulatory schemes in New Zealand,[133] such as privacy[134] and harmful digital communications.[135] Our understanding of the proposals is that where content harms are covered both by existing regulatory schemes and by codes of practice overseen by the regulator, the specialist agencies responsible for existing regulatory schemes will continue to address individual cases of content harm according to those schemes.

If the system is to work in this way, agencies will need to provide the regulator with sufficient information and advice about individual cases to allow the regulator to properly monitor codes of practice that overlap with these specialist domains, including through regular interagency reporting. Regular sharing of information would also allow the regulator to issue takedown or prevention notices, if necessary, during or following the resolution of individual cases.[136]

If multiple public organisations are to be involved in monitoring and addressing content harms, consumers need to have a single 'front door' or at least 'no wrong door' through which they can make complaints, ask for information, and seek support. This would be consistent with these organisations' information-sharing functions described above, and with models set up internationally. For example, an expert group in Ireland concluded in 2022 that a unified system for public complaints about harmful online content would be feasible for its regulator,[137] and could be funded by a statutory levy on industry.[138]

---

132 See Films, Videos, and Publications Classification Act, section 88(2)(a)–(b) for similar functions under the current regulatory system.

133 Discussion document, above n 1, at [126].

134 At 5. See Privacy Act 2020, particularly the role of the Privacy Commissioner: section 17.

135 Discussion document, above n 1, at [126]. See Harmful Digital Communications Act. The Approved Agency under section 7 is currently Netsafe: Harmful Digital Communications (Appointment of Approved Agency) Order 2021, clause 3.

136 See our responses to questions 18 and 19. Information-sharing arrangements between the regulator and enforcement agencies would need to preserve the independence of each agency while enabling them to co-operate within the content regulatory system. We would expect these measures to be detailed in primary legislation. Otherwise, for example, if the regulator held information needed by Police as part of an investigation, the regulator may only be authorised to supply it if requested by Police. That would require Police to know the regulator held that information. Further difficulties may arise if Police were required to obtain warrants to search records held by the regulator.

137 Isolde Goggin and others *Report of the Expert Group on an Individual Complaints Mechanism* (Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, May 2022) at 1. "Individual complaints mechanism" is defined at 9.

138 At 27, citing what became section 21 of the Broadcasting Act (Ireland).

A 'single front door' approach would require the regulator to accurately triage correspondence, and require other agencies to be receptive to referrals.[139] In our experience, parts of the content regulatory system already operate in this way. We believe other parts of the system may benefit from increased economies of scale by having complaints and enquiries accurately triaged before they arrive at the agency for action and/or response. Agencies could be required to 'adopt' complaints referred to them by the regulator in this way.[140] This could be achieved in a variety of ways, such as through legislation, or an agreement through a memorandum of understanding between public organisations involved in the content regulatory system.[141]

In contrast, complaints and enquiries from consumers to platforms and services should, where applicable, be handled in accordance with codes of practice.[142]

22. Have we identified all key actors with responsibilities within the framework? Are there any additional entities that should be included?
(Page 63 of the discussion document)

The discussion document broadly captures most of the key interests in the system. Below are some others that the proposals should cover more fully.

Internet service providers (ISPs) may have responsibilities toward illegal content when platforms and services persistently fail to comply with New Zealand laws.[143] The role of content delivery networks (CDNs) may also need to be considered, as they are essentially intermediaries between content providers and ISPs.[144]

The role of Māori governance should be made clear, with a range of options explored to best uphold te Tiriti o Waitangi and Māori interests generally.[145]

---

139 A 'single front door' approach has recently been recommended to improve responses and advice to organisations affected by cyberattacks. This recommendation was for similar reasons to those we have outlined in this response: to "avoid … confusion, crossover and gaps" and "significantly improve user experience": New Zealand Cabinet Cyber Security Advisory Committee *Report back on Workstreams 1/2/3* (Department of the Prime Minister and Cabinet, 24 March 2022) at 1.

140 See Official Information Act 1982, section 14 for a similar obligation on agencies which receive requests for official information that have been transferred to them by other agencies.

141 Platforms and services should however be required to report this information to the regulator, and provide adequate information for consumers to be able to take issues further where needed: see our response to question 7.

142 See our response to question 7 for how codes may contain (non-exclusive) complaints mechanisms.

143 See our response to question 15.

144 CDNs speed up the flow of data from websites and protect them from attacks. They achieve this by making copies of websites across a network of servers placed in multiple locations, often around the world, so that data can be retrieved closer to where a user is accessing it from: Amazon AWS "What Is A CDN (Content Delivery Network)?" <https://aws.amazon.com/what-is/cdn/>.

145 See our response to question 23.

The role of Parliament in the proposals could be made clearer. Our view on the role primary legislation should have in the content regulatory system is detailed in our response to question 4.

We would like to see more detail around the role of the departmental monitor.[146] We expect that one of the key functions the monitor would have is to advise the Minister and/or Cabinet on the policy settings to be captured in regulations which inform code development.[147] To help ensure the regulator remains independent, we believe the departmental monitor should be different from the enforcement agency (or agencies). This would separate powers for prosecuting individuals for criminal offences relating to content from platform monitoring powers and powers of appointment within the system, such as advising on (or assisting with recruitment for) the chief executive of the regulator.

It is unclear how cross-government and transnational initiatives such as the Christchurch Call will fit into the proposed framework.[148]

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 of the discussion document)

Our view is that the current content regulatory system does not clearly uphold te Tiriti o Waitangi or provide well for te ao Māori. The next system must do better. We outline here some ways in which te Tiriti principles of partnership, active protection, redress, and the Crown's duty to consult Māori may be better realised.

We note that workshops have been held with Māori,[149] and Māori interests and perspectives have been referred to throughout the discussion document. The provisions and principles of te Tiriti need to flow through the entire process in which the system is developed. Māori need to be fully involved in Aotearoa's content regulatory system, particularly at this stage, for the system to work for all New Zealanders. The tikanga on content regulation needs to be informed by evidence, and we hope to support this with our research agenda.

146 Discussion document, above n 1, at [116].
147 At 27 (on left-hand side of chart).
148 At [26]. See our response to question 12.
149 At [152].

There are many ways in which the regulator could be structured to help reflect its role and fulfil its obligations towards Māori. It would be valuable to explore how other Crown entities have been set up to achieve this. It may also be valuable to look to how signatories to UNDRIP have upheld indigenous rights in establishing and operating regulatory bodies, within and beyond content regulation.[150]

The regulator would need to uphold the Crown's te Tiriti responsibilities, and apply those expectations to the services it regulates through codes of practice, whether or not those services are based in New Zealand. A clear expression of the role of the regulator in legislation would be the best place to set out both the general expectation to act in accordance with te Tiriti principles, and to describe how specific responsibilities will be managed (such as complaints).[151]

Additionally, Te Arawhiti—the Office for Māori Crown Relations provides guidance about non-legislative measures for te Tiriti-based policy design that we believe will be essential to the design of the new system.[152] These may include investing in programmes that are developed in partnership with Māori and for Māori, and sharing delivery functions and responsibilities with Māori partners.

We also support the proposal for Māori governance and decision-making to be a feature of the regulator.[153] Te Mana Whakaatu has taken small steps towards this, which have worked well for our tari. However, we would encourage Te Tari Taiwhenua to explore measures beyond corporate governance and decision-making about content, to make sure the regulator operates meaningfully within te ao Māori. We provide two examples below. Ultimately, however, Māori must be involved in both the development and implementation of any such initiatives.

A Māori advisory panel could be established to assist with decision-making about codes and complaints. This could be modelled on initiatives within New Zealand[154] and internationally,[155] within content regulation and other regulatory schemes, such as within youth and social policy, consumer protection, and/or healthcare.

---

150 *Declaration on the Rights of Indigenous Peoples* GA Res 61/295 (2007).

151 For example, objectives could be contained in primary legislation, along with the authority to make regulations that give effect to them; and specific provisions for initiatives which fulfil these objectives could be contained in regulations.

152 Te Arawhiti—Office for Māori Crown Relations *Providing for the Treaty of Waitangi in Legislation and Supporting Policy Decision* (March 2022).

153 Discussion document, above n 1, at [119] and [121].

154 See for example our Youth Advisory Panel: Te Mana Whakaatu—Classification Office "Youth Advisory Panel" (6 December 2021) <www.classificationoffice.govt.nz/about/youth-advisory-panel/>.

155 Legislation recently passed in the Republic of Ireland provides for the establishment of committees to "assist and advise" the content regulator: Broadcasting Act (Ireland), section 19.

The regulator could also have functions to support platforms and services that predominantly serve Māori.[156]

24. Do you think that our proposals will sufficiently address harms experienced by Māori?
(Page 69 of the discussion document)

No. We find it difficult to tell at this stage how hate speech and racist content will be curtailed under codes of practice. Currently, the proposals need further development to sufficiently address harms experienced by Māori.

In our 2022 research report, Māori participants reported seeing:[157]

> … online content that promotes or encourages violence towards others due to characteristics like race, sexuality or gender, violent extremism or terrorism. It was also more common for Māori and Pacific participants to see content promoting hatred or discrimination based on race, culture and religion.
>
> It was also somewhat more common … for Māori participants to have seen content promoting suicide or self-harm.

In 2021, we classified a video that included racist anti-Māori content and calls for fatal violence against Māori.[158] We classified the video as objectionable because it promotes and encourages acts of crime and terrorism. However, it is not clear to us how the proposals would address content near this level of severity but short of the threshold for being banned, particularly if legal restrictions were not to be retained.[159]

There is a risk that the proposals themselves could result in disproportionately adverse outcomes for Māori if Māori voices are perceived to be, or are in fact, shut down through the operation of codes. Indigenous groups in Canada have raised concerns along these lines.[160]

Some countermeasures may be required to reduce risks like these. For example, the reporting requirements for platforms and services should include transparency around complaints made by Māori, and about Māori content. Likewise, Māori

---

156 Norway's media regulator Medietilsynet has functions to support indigenous media: see Medietilsynet "The Norwegian Media Authority's responsibilities and tasks" (translated, 13 June 2021) <https://www.medietilsynet.no/om-medietilsynet/oppgaver/medietilsynets-ansvar-oppgaver/>.

157 Te Mana Whakaatu—Classification Office, above n 9, at 23.

158 OFLC 2100228.000 *#IAM THE TRUTH* (10 June 2021).

159 See our response to question 16.

160 Marie Woolf "LGBTQ, Indigenous and racialized groups fear online hate bill may curtail rights" *Global News* (Canada, 23 April 2022).

should have access to mātauranga about how their content and communities will be affected by these proposals, whether positively or negatively.

25. What do you think about how rights and press freedoms are upheld under the proposed framework?
(Page 70 of the discussion document)

Aotearoa's content regulatory system must strike a fair and proportionate balance between the full range of New Zealanders' human rights. The lack of a modern and functional content regulatory system is resulting in a failure to achieve this balance, which in turn is interfering with the rights of New Zealanders.

The right to freedom of expression includes the right to seek and receive content, not just to send or supply it.[161] New Zealanders are entitled to access content containing "information and opinions of any kind in any form",[162] subject to lawful and reasonable limits.[163] This means that everyone in New Zealand has the right to access legitimate content they want to see, hear, or read.[164] It does not mean that platforms and services have the right to supply all content, or even all lawful content, to their New Zealand audiences.[165]

However, the system must have a sophisticated and holistic approach to all rights, not only freedom of expression.[166] We are particularly mindful of the rights that children and young people have when accessing content, especially online content. New Zealand is required to take steps to protect children and young people from harmful information and material.[167]

We also point out that as the content regulatory system is proposed to cover a wider range of types of illegal content,[168] the extent to which the system must recognise and uphold victims' rights would also grow. Where a victim in New Zealand has an interest in illegal content, the regulator must be informed and empowered to act in a way that is consistent with their rights. The regulator should, wherever possible, act in a way that respects the mana of victims and

---

161 New Zealand Bill of Rights Act 1990, section 14.

162 Section 14.

163 Section 5.

164 We also note that a person's right to legally access only the content they want to see is consistent with their consumer right to be able to do so on a platform that holds itself out to allow such access.

165 We note a recent comment by the chair of Twitter: "We call it freedom of speech, not freedom of reach … Yes, you can say offensive things, but then your content is going to get rated down …"; Antonio Piemontese "Elon Musk Seeks Support Against Rules on Free Speech Online" *Wired* (United States, 28 June 2023).

166 See New Zealand Bill of Rights Act, section 28.

167 *Convention on the Rights of the Child* GA Res 44/25 (1989), article 17(e).

168 Discussion document, above n 1, at [106]. See also our response to question 19.

works towards a state of ea.[169] The regulator may need to balance this with acting pragmatically to prevent harm posed by illegal content to New Zealanders more generally.[170] Primary legislation may recognise, supplement, or modify the existing principles in this area.[171]

In short, our view is that:

a. The right to free expression requires that New Zealanders have unimpeded access to the lawful content they seek.

b. Harmful content impedes access to the content New Zealanders want.[172]

c. Harmful content also breaches the other rights New Zealanders have.

Therefore, limiting or preventing harmful content will enhance human rights in Aotearoa.

We emphasise too that successful implementation of the content regulatory system will depend just as much on platforms and services acting in accordance with New Zealanders' rights as it will on the regulator and other public agencies.[173] A rights-centric approach must inform not only the design of the system, but also its implementation. Codes of practice should clearly state the obligations on those covered by the codes to uphold the rights of New Zealanders.

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 of the discussion document)

Overall, the proposals strike a good balance between certainty and flexibility for everyone involved in the content regulatory system. A measured approach that balances prescriptiveness and flexibility would work best for government, industry, and consumers.

Finally, we note that the development of transitional provisions between the Classification Act and the proposed content regulatory system should begin as soon as possible. We expect any content that is currently banned (objectionable)

---

[169] See also Victims' Rights Act 2002, section 7.

[170] See our response to question 19, particularly on takedown notices, for an example of how the regulator may need to weigh victims' rights with other factors in deciding on a course of enforcement action.

[171] See for example Victims' Rights Act, section 10.

[172] This is consistent with the fact that what is harmful for some people will not be harmful for others: discussion document, above n 1, at [11]–[12].

[173] Paul Hunt, Chief Human Rights Commissioner *The communication revolution, human rights and te Tiriti o Waitangi* (Te Kāhui Tika Tangata—Human Rights Commission, May 2023) at 3.

to remain banned. Other provisions, including for content that is currently restricted, could be broader and more flexible.

It should be left up to platforms and services that are subject to the new codes to decide whether to 'adopt' content that was previously classified and provide appropriate consumer advice. If prescriptive rules for non-objectionable content are necessary, these should be left to the regulator to set or continue at its discretion.

We would not recommend embedding firm transitional provisions in legislation, like those in the Classification Act.[174] These provisions still apply to a large range of publications and, in our experience, have not been practicable to administer.

---

[174] See Films, Videos, and Publications Classification Act, part 10. These provisions deem many decisions made under the Indecent Publications Act 1963, Films Act 1983, and Video Recordings Act 1987 to have been decisions made under the Films, Videos, and Publications Classification Act.

References

Amazon AWS "What Is A CDN (Content Delivery Network)?" <https://aws.amazon.com/what-is/cdn/>.

Anti-Money Laundering and Countering Financing of Terrorism Act 2009, sections 80–83.

Antonio Piemontese "Elon Musk Seeks Support Against Rules on Free Speech Online" *Wired* (United States, 28 June 2023).

British Board of Film Classification "BBFC and Prime Video take next step in content partnership" (press release, 7 March 2023).

Broadcasting Act 1989.

Broadcasting Act 2009 (Ireland), as amended by Online Safety and Media Regulation Act 2022 (Ireland).

Clare Dyer "'Social media content contributed to teenager's death "in more than a minimal way,' says coroner" (2022) 379 BMJ 2374.

Consumer Guarantees Act 1993, parts 1 and 4.

Convention on the Rights of the Child GA Res 44/25 (1989), article 17(e).

Coroners Act 2006, section 71.

Crimes Act 1961, sections 216G and 306(1)(b).

David Fisher "The Real News: Who is really behind the Covid-19 conspiracy magazine being dropped into 60,000 letterboxes" *The New Zealand Herald* (online ed, Auckland, 12 March 2021).

Declaration on the Rights of Indigenous Peoples GA Res 61/295 (2007).

Department of Internal Affairs "Digital Child Exploitation Filtering System" (2021) <https://www.dia.govt.nz/Preventing-Online-Child-Sexual-Exploitation-Digital-Child-Exploitation-Filtering-System>.

Department of Internal Affairs *Discussion Document: Safer Online Services and Media Platforms* (1 June 2023).

eSafety Commissioner "eSafety demands answers from Twitter about how it's tackling online hate" (press release, 22 June 2023).

eSafety Commissioner "How the Online Safety Act supports those most at risk" <https://www.esafety.gov.au/communities/how-online-safety-act-protects-those-most-at-risk>.

Fair Trading Act 1986, sections 9–11.

Films Act 1983.

Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020.

Films, Videos, and Publications Classification Act 1993.

Films, Videos, and Publications Classification Regulations 1994.

Harmful Digital Communications (Appointment of Approved Agency) Order 2021, clause 3.

Harmful Digital Communications Act 2015.

Hon Michelle Rowland "Next step in modernising Australia's Classification Scheme" (press release, 22 June 2023).

Human Rights Act 1993, section 20.

Indecent Publications Act 1963.

Isolde Goggin and others *Report of the Expert Group on an Individual Complaints Mechanism* (Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, May 2022).

Marie Woolf "LGBTQ, Indigenous and racialized groups fear online hate bill may curtail rights" *Global News* (Canada, 23 April 2022).

Medietilsynet (Norwegian Media Authority) via NTB Kommunikasjon "Now the age limits at the cinema are set by the distributors" (press release, translated, 2 January 2023).

Medietilsynet "The Norwegian Media Authority's responsibilities and tasks" (translated, 13 June 2021) <https://www.medietilsynet.no/om-medietilsynet/oppgaver/medietilsynets-ansvar-oppgaver/>.

New Zealand Cabinet Cyber Security Advisory Committee *Report back on Workstreams 1/2/3* (Department of the Prime Minister and Cabinet, 24 March 2022).

New Zealand Bill of Rights Act 1990.

Official Information Act 1982, section 14.

OFLC 1700158.000 *13 Reasons Why: Episode 1 (Tape 1, Side A)* (27 April 2017).

OFLC 1700235.000 *Wicked Camper EFH750* (14 July 2017).

OFLC 1700236.000 *Wicked Camper GCT784* (14 July 2017).

OFLC 1700237.000 *Wicked Camper HZN623* (14 July 2017).

OFLC 1900148.000 *Christchurch Mosque Attack Livestream* (27 March 2019).

OFLC 1900149.000 *The Great Replacement* (29 March 2019).

OFLC 1900373.000 *It's Alright to be White* (2 September 2019).

OFLC 1900393.000 *News Wars: Christchurch Used to Silence Questioning on Global Scale* (18 October 2019).

OFLC 2000089.000 *Vestal Masturbation (Cradle of Filth T-Shirt)* (25 May 2020).

OFLC 2000109.000 *New Zealand's Darkest Day?* (15 April 2020).

OFLC 2000163.000 *1X.mp4* (23 July 2020).

OFLC 2000392.000 *Paris Beheading - screenshot of original post* (31 May 2021).

OFLC 2000392.001 *Paris Beheading (image only)* (31 May 2021).

OFLC 2000392.003 *PARIS_Muslim terrorist shouting "Allahu Akbar" BEHEADS teacher who showed cartoons of Prophet Mohammed to his students* (31 May 2021).

OFLC 2000392.008 *Some random guy beheads another random guy in Paris* (31 May 2021).

OFLC 2100212.004 *FB_IMG_1594179847799.jpg* (4 August 2021).

OFLC 2100212.005 *FB_IMG_1594201517376.jpg* (4 August 2021).

OFLC 2100228.000 *#IAM THE TRUTH* (10 June 2021).

OFLC 2100493.000 *Jackass Forever* (14 December 2021).

OFLC 2200014.000 *Machete attack video (Publication 1)* (8 April 2022).

OFLC 2200014.001 *Machete attack video (Publication 4)* (8 April 2022).

OFLC 2200201.001 *Succession: Season 3 (episodes 4–6)* (29 June 2022).

Online Safety Bill 2023 (HL Bill 164) (UK), clause 12.

Organisation for Economic Co-Operation and Development "CO4.4: Teenage suicides (15–19 years old)" (17 October 2017) <www.oecd.org/els/family/CO_4_4_Teenage-Suicide.pdf>.

Paul Hunt, Chief Human Rights Commissioner *The communication revolution, human rights and te Tiriti o Waitangi* (Te Kāhui Tika Tangata—Human Rights Commission, May 2023).

Privacy Act 2020, section 17.

Social Media Services Online Safety Code (Class 1A and Class 1B Material) 2023 (Australia), clause 26.

Te Arawhiti—Office for Māori Crown Relations *Providing for the Treaty of Waitangi in Legislation and Supporting Policy Decision* (March 2022).

Te Mana Whakaatu—Classification Office “Youth Advisory Panel” (6 December 2021) <www.classificationoffice.govt.nz/about/youth-advisory-panel/>.

Te Mana Whakaatu—Classification Office *Annual Report 2021/22* (18 November 2022).

Te Mana Whakaatu—Classification Office *NZ Youth and Porn: Research findings of a survey on how and why young New Zealanders view online pornography* (December 2018).

Te Mana Whakaatu—Classification Office *What We're Watching* (June 2022).

The Collaborative Trust *Literature Review: Impacts on Children and Young People of Exposure to Nudity on Television and Other Media* (May 2019).

United Kingdom Chief Medical Officers’ Commentary on ‘Screen-based activities and children and young people’s mental health and psychosocial wellbeing: a systematic map of reviews’ (7 February 2019).

US Surgeon General *Social Media and Youth Mental Health* (2023).

Vera Slavtcheva-Petkova “Written evidence in the House of Lords’ ‘Children and the Internet’ Inquiry (CHI0054)”.

Victims’ Rights Act 2002.

Video Recordings Act 1987.