



Internal Affairs briefing

DOCUMENT 1

Hon Jan Tinetti
Minister of Internal Affairs

Title: **Approach to progressing Recommendation 41 of the Royal Commission of Inquiry Report into the Christchurch terror attacks**

Date: 15 October 2021

Key issues

This briefing seeks your direction on the preferred approach to progressing the Royal Commission of Inquiry Report's recommendation to amend the definition of objectionable in the Films, Videos and Publications Classification Act 1993 (recommendation 41).

Following your agreement to our proposed approach in February, we have been progressing the recommendation aligned with Ministry of Justice's incitement of hatred proposals. We also canvassed progressing the recommendation through a stand-alone Bill in our previous advice.

As the review of current content regulation, including the first phase of engagement, is now well underway we seek your direction on whether this may be preferred as an alternative option to progress recommendation 41.

There are trade-offs to be considered in relation to timing, resourcing and alignment with other work-streams in determining your preferred approach. This advice identifies these trade-offs and we will discuss your preference at the 20 October 2021 IA officials' meeting.

The preferred approach will then be reflected in our advice to the Department of the Prime Minister and Cabinet, who are preparing a paper for Hon Little to update Cabinet in November on the Report's implementation progress as Lead Coordination Minister for the Government's Response.

Action sought

Note the Royal Commission of Inquiry into the Christchurch terror attacks recommended amending the definition of objectionable to include racial hate, racial discrimination and racial superiority;

Note implementing the recommendations is a Government priority;

Discuss the advice in this briefing with officials at the 20 October 2021 IA officials' meeting;

Indicate your preferred approach to progressing Recommendation 41; and

Note you may wish to discuss your preferred approach with Hon Little, Lead Minister for the Response, and Hon Fafoi, Minister of Justice.

Timeframe

Prior to the discussion at the IA Officials' meeting on 20 October 2021

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
9(2)(g)(ii)	Policy Director – Gambling, Media Content, and Racing	9(2)(g)(ii)	✓
9(2)(g)(ii)	Principal Policy Analyst	9(2)(g)(ii)	

Return electronic document to:	9(2)(g)(ii)
Cohesion document reference	SS74WDQEK3HX-838143529-61
Ministerial database reference	IA202101584

Purpose

1. To seek your direction on the preferred approach to progressing Recommendation 41 of the Royal Commission of Inquiry Report into the Christchurch terror attacks.

Implementing the recommendations of the Royal Commission of Inquiry into the terrorist attacks on Christchurch masjidain is a Government priority

2. The Royal Commission of Inquiry into the Terrorist Attacks on Christchurch mosques (RCOI) recommended amending the current definition of objectionable in the Films Videos and Publications Classification Act 1993 to make it clear that creating, possessing or distributing material relating to racial superiority, racial hatred and racial discrimination would be a criminal offence (Recommendation 41). This recommendation was made within the suite of recommendations aimed at improving social cohesion.
3. Hon Andrew Little is Lead Coordination Minister for the Government's Response. The Department of the Prime Minister and Cabinet (DPMC) is responsible for coordinating the all-of-government response to the report. Minister Little reported to Cabinet in March 2021 following a series of hui with communities about the RCOI Report, its findings and recommendations.
4. Cabinet agreed to a phased approach to the implementation of recommendations based on communities' priorities, and invited Minister Little to report back before the end of 2021 on consideration and implementation of the RCOI recommendations and intent.
5. DPMC are now preparing a paper for Hon Little to submit to Cabinet in November. The paper will provide an update on progress made since March 2021, 9(2)(f)(iv)

We have been progressing Recommendation 41 aligned to the Ministry of Justice's incitement of hatred workstream

6. In February 2021, you agreed with our proposed approach to progress recommendation 41 alongside the Ministry of Justice's proposed incitement to hatred proposals [IA202100032]. Our recommendation was made prior to the Content Regulatory System review receiving Cabinet approval to progress.
7. The Department took part in the Ministry of Justice / Ministry of Social Development led public consultation in July / August 2021 on incitement of hatred and social cohesion proposals. Undertaking targeted engagement on recommendation 41 with specific groups to get a better understanding of their views. We deliberately adopted this approach to gather preliminary views from affected groups most likely to be targeted by racial hate and discrimination. We were able to gather views from minority groups in a safe way without the process being overwhelmed by the significant public attention on incitement of hatred proposals.
8. 9(2)(f)(iv)

9(2)(f)(iv)

It is timely to review the current approach and we seek your direction on the way forward

9. We previously advised that should the review of the Content Regulatory System workstream become a viable option, then we could switch to that approach if that is desirable. Following your announcement in June, the review has progressed considerably, including commencing the first phase of targeted engagement. The review now presents an alternate workstream to progress recommendation 41 and we seek your direction on whether this approach may be preferable.
10. As outlined below, both options require considering trade-offs. Some of the key factors to weigh up in deciding your preference are:
 - 10.1 Certainty of timing and process;
 - 10.2 Consultation needs and demands on communities;
 - 10.3 The benefits and risks of addressing recommendation 41 alongside other similar changes to criminal offences under other statutes, versus alongside a broader range of classification and content issues; and
 - 10.4 Resourcing implications across your priority workstreams.

Continuing to progress recommendation 41 aligned to Ministry of Justice incitement of hatred proposals presents some challenges

11. We are able to progress Recommendation 41 as part of the incitement to hatred proposals. Subject to your and Cabinet agreement, we could undertake public consultation on the proposed change and seek Cabinet approval to legislative amendments in the new year. 9(2)(f)(iv)
12. This approach would likely enable faster implementation of Recommendation 41 compared to progressing as part of the Content Regulatory Review. Under this option, we would progress work on the specific issue of including racial hate, racial discrimination and racial superiority within the current definition of objectionable material, with a broader engagement on what content should be illegal under a new, modern approach to content regulation as part of the Content Regulatory System review.
13. There is some risk of iterative consultation, however we consider this can be mitigated by clarifying the specific nature of the proposed change to the current definition. There may also be confusion among some stakeholders if this workstream is progressed separately from the Content Regulatory System review. Again, this risk can be managed through clear messaging about the separate scope of the two workstreams. There are likely to be resource implications that the Department will need to manage under this option.

14. 9(2)(f)(iv) [Redacted]

15. 9(2)(f)(iv) [Redacted]

16. Progressing the recommendation via a stand-alone Bill is still not recommended. We briefed you on this option in February and our advice remains unchanged. As the Bill would make a small discrete change it would likely struggle to gain priority for House time and would mean that the speed of the Bill would be unpredictable. Progressing the work in isolation from existing work programmes would also require additional resource for little additional benefit.

Progressing the recommendation as part of the review of the Content Regulatory System workstream also presents challenges

- 17. The review of the current regulatory system seeks to design a modern and flexible regulatory framework to minimise harm from content while ensuring consistency with fundamental rights such as the freedom of expression.
- 18. The issue of *what* content should be illegal and *how* the new framework should respond to this type of content (conceptualised in the current definition of “objectionable”) is a key component of the review. This issue has already come up as a key issue in our initial engagement sessions with civil society and non-government organisations and media and service providers. The issue of illegal content is intertwined with other aspects of the review, such as designing appropriate protections to prevent access to this type of content and determining the different levels at which protections could be applied.
- 19. Merging recommendation 41 within this workstream would be consistent with the objectives of the review and would likely be a more efficient use of resources. It would also minimise the risk of overlap or duplication in the work and provide stakeholders, particularly civil society and communities, a better sense of how the proposed amendment would sit within the wider Content Regulatory system, including thresholds for determining when certain types of content should be made illegal.
- 20. There is however a significant risk with this option in that it prolongs and segments the public debate about criminalisation of content that some sectors of the community see as protected by their right to freedom of expression. This

approach risks delaying consideration of recommendation 41 until well after other law changes covering different aspects of racial incitement, discrimination and hate crimes, which could risk fragmentary and inconsistent legal changes. [REDACTED]

9(2)(g)(i) [REDACTED]

21. 9(2)(f)(iv) [REDACTED]

22. Slowed or delayed progress may not meet the Government's priority to implement the RCOI changes in a timely manner. Cabinet has agreed to a phased work programme for implementation recognising that implementation of some recommendations, for example those relating to social cohesion improvements (Recommendation 41 was made within this context) may need to be set as long-term priorities. Given the discrete nature of Recommendation 41, it may not be credible however, to put it on the same long-term track as a much wider-ranging programme of non-legislative initiatives.

Next steps

23. Officials would like to discuss these options, the related trade-offs, and your preferred approach at the 20 October 2021 IA Officials' meeting.

24. Should you wish the Department to continue progressing recommendation 41 aligned with the Ministry of Justice's work, we will provide you with advice on seeking Cabinet approval to publicly consult on the proposed change. 9(2)(f)(iv) [REDACTED]

25. If your preferred approach is to merge progressing Recommendation 41 within the review of the Content Regulatory System, we will include the proposed change within our policy development and proposals, in the context of reviewing what should be illegal under a new content regulatory regime.

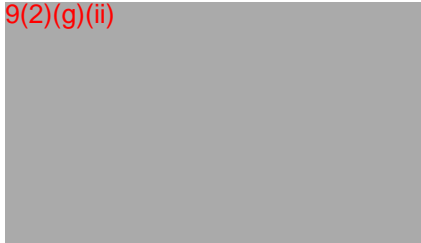
26. Once you have indicated your preferred approach, we will advise DPMC, who are preparing a paper for Hon Little to update Cabinet in November on the Report's implementation progress. You may also wish to discuss your preferred approach with Hon Little as Lead Coordination Minister for the Government's Response, and Hon Faafoj, Minister of Justice. Officials can provide you with talking points to support these discussions if needed.

Recommendations

27. We recommend that you:

- a) **Note** the Royal Commission of Inquiry into the Christchurch terror attacks recommended amending the definition of objectionable to include racial hate, racial discrimination and racial superiority;
- b) **Note** implementing the recommendations is a Government priority;
- c) **Discuss** the advice in this briefing with officials at the 20 October 2021 IA officials' meeting; **YES/NO**
- d) **Indicate** your preferred approach to progressing Recommendation 41;
 - i. Continue to progress Recommendation 41 aligned to the Ministry of Justice incitement of hatred workstream **YES/NO**
 - ii. Merge Recommendation 41 within the Content Regulatory System review **YES/NO**
- e) **Note** you may wish to discuss your preferred approach with Hon Little, Lead Coordination Minister for the Government Response and Hon Faafoi, Minister of Justice

9(2)(g)(ii)



Policy Director

Hon Jan Tinetti
Minister of Internal Affairs

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Internal Affairs briefing

DOCUMENT 2

Hon Jan Tinetti
Minister of Internal Affairs

Title: **Policy briefing: Update on the review of content regulation in Aotearoa New Zealand**

Date: 9 December 2021

Key issues

On 6 August 2021, you agreed to our recommended approach to targeted engagement on the content regulation review [IA202101104 refers]. This approach involves tailoring the format and content of engagement sessions to the interests and needs of different groups of stakeholders. It has been well-received by the stakeholders we have met with so far.

In line with this approach and feedback on consultation fatigue, we are extending engagement to the end of March 2022 to enable meaningful and culturally appropriate engagements with Māori, young people, Pacific, ethnic, and faith-based communities.

Under our current timeline, the next round of engagement (via a discussion document) would cover only high-level options for change. We recommend revising the review's timeline to include engagement on a preferred option for the new content regulatory framework. Revising the timeline is desirable given feedback we have received from stakeholders about the need to continue with an inclusive approach to engagement, which recognises diverse viewpoints, the intersecting identities of stakeholders, and the scale and complexity of issues and harms in the content regulatory space.

We outline two options for undertaking additional engagement on a preferred option, as well as the benefits and risks with each option, for your consideration.

We are available to discuss these options with you as part of the policy work programme discussion at your regular meeting with officials on 15 December 2021.

Action sought	Timeframe
<p>note the feedback received from targeted engagement sessions held from September to December 2021;</p> <p>note that targeted engagement will continue to the end of March 2022 to enable further meaningful engagement with stakeholders;</p> <p>note that we wish to discuss options for the overall timeline for the review following feedback received during engagement, at your regular meeting with officials; and</p> <p>direct officials on your preferences for the review, 9(2)(f)(iv)</p>	<p>Prior to the policy work programme discussion with officials on 15 December 2021</p> <p>At your convenience in early 2022</p>

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
9(2)(g)(ii)	General Manager Policy Group	9(2)(g)(ii)	
9(2)(g)	Policy Manager	9(2)(g)(ii)	✓

Return electronic document to:	9(2)(g)(ii)
Cohesion document reference	SS74WDQEK3HX-838143529-76
Ministerial database reference	IA202101857

Purpose

1. This briefing seeks your direction on timeline options for progressing the review of content regulation in Aotearoa New Zealand (the review). We are available to discuss these timeline options with you as part of the policy work programme agenda item we have proposed at your regular meeting with officials on 15 December 2021.

Executive Summary

2. We have held 28 engagement sessions with stakeholders as part of targeted engagement on the review. Stakeholders we engaged with range from different communities who consume and interact with content, to the creators, providers, and regulators of content. Engagements have been tailored to the interests and expertise of these different stakeholder groups, in line with your preferences.
3. In order to continue with the current inclusive engagement approach, we are extending targeted engagement for specific communities to the end of March 2022 to enable meaningful and culturally appropriate engagement.
4. Feedback we have received so far has reinforced the need to continue with an inclusive engagement approach, which recognises broad and diverse viewpoints, intersecting identities, and the scale and complexity of the issues and harms in the content regulatory space.
5. We recommend engaging on a preferred option for the proposed new content regulatory framework, and we seek your direction on two timeline options that would enable this engagement to occur.
6. The two options are:
 - 6.1 Engage on a preferred option at the public consultation discussion document stage (**Option 1**); or
 - 6.2 Engage on a preferred option through an exposure draft Bill for consultation, following an initial public consultation process and Cabinet decisions on a preferred option (**Option 2**).
7. Your decision on a preferred timeline for the review will require consideration of the different potential engagement points for stakeholders and the timing implications of those. 9(2)(f)(iv)
8. We wish to discuss these timeline options with you at your regular meeting with officials on 15 December 2021, 9(2)(f)(iv)

We are continuing an inclusive approach to targeted engagement, in line with your preferences

9. In May 2021, Cabinet agreed to initiate a harm-minimisation focused review of media content regulation [CAB-21-MIN-0179 refers].
10. On 6 August 2021, we provided you with a briefing outlining our recommended approach to targeted engagement, which was planned for August to November 2021 [IA202101104 refers]. This approach involved tailoring the format and content of engagement to the interests and expertise of different stakeholder groups. Owing to the COVID-19 Delta outbreak in August 2021, engagement sessions were pushed back to starting at the end of September 2021 and were shifted to a virtual-only format.

11. Between the end of September and early December 2021, we held 28 engagement sessions with: Government agencies and Crown Entities; regulatory actors; academics and researchers; specialist interest groups in the protection of human rights and vulnerable populations; mental health advocacy groups; New Zealand media and tech providers; Big Tech and social media platforms; individuals with relevant expertise; and stakeholders representing wāhine, seniors, disability and rainbow communities.

To continue with the current inclusive engagement approach, we are extending targeted engagement for specific communities to the end of March 2022

12. We are extending engagement to the end of March 2022 to enable meaningful and culturally appropriate engagement with Māori, young people, Pacific, ethnic, and faith-based communities. The need to extend the period of targeted engagement has emerged through feedback from engagements that we have held so far. For example, we have had detailed discussions with agencies that hold expertise and relationships with these communities, such as Te Arawhiti, Ministry for Pacific Peoples, Ministry for Ethnic Communities, and Ministry for Youth Development.
13. These discussions have informed our view that a longer timeframe is needed for engaging with these community groups. For example, there was a risk of poor attendance if engagements were held in November to December 2021 as planned, due to consultation fatigue felt by these communities in particular. These communities have also had many other time and resource-specific demands (e.g. COVID-19 vaccination efforts, exams and end of school for younger people).

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

It is timely to confirm the review's indicative timeline in light of feedback received

15. The May 2021 Cabinet paper included an indicative timeline for progressing the review and signalled that the timeline would need to be reviewed as the scope of the review is refined. It is timely to confirm the review's timeline ahead of the next major milestone for the review work, which is the development of a discussion document. The original Cabinet paper set a timeframe of February 2022 for consideration of a discussion document, but the delays to engagement mean this is not feasible.
16. Development of the proposals for inclusion in the discussion document will begin early next year, and your direction on the timeline for the review will determine the approach to the discussion document.
17. We now recommend formal engagement on a preferred option for the review, which is an additional step in the process. The original plan was to consult on some high-level options and then not consult again until Select Committee, but this is not in line with feedback we have heard so far or the inclusive engagement approach that we are taking. 9(2)(g)(i)

Feedback from the targeted engagement process has demonstrated significant benefits from taking an inclusive approach to engagement

18. The stakeholders we have engaged with have emphasised the need for the review to address significant issues facing New Zealand. ^{9(2)(g)(i)}

[Redacted]

[Redacted] Details of key themes are attached as **Appendix A**.

19. This feedback reinforces the need to continue with an inclusive engagement approach that recognises broad and diverse viewpoints, stakeholders' intersecting identities, and the scale and complexity of the issues and harms in the content regulatory space.

We recommend engaging on a preferred option for the proposed new content regulatory framework, which would have impacts on the review's timeline

20. We seek your direction on two timeline options that would enable the inclusion of engagement on a preferred option for the new framework (attached as **Appendix B**). These options are:

20.1 Engage on a preferred option at the public consultation discussion document stage (**Option 1**); or

20.2 Engage on a preferred option through an exposure draft Bill for consultation, following an initial public consultation process and Cabinet decisions on a preferred option (**Option 2**).

21. We wish to discuss these timeline options with you at your regular meeting with officials on 15 December 2021, ^{9(2)(f)(iv)}

[Redacted]

^{9(2)(g)(i)}

[Redacted]

[Redacted]

[Redacted]

[Redacted]

9(2)(g)(i)

Next steps

33. We are available to discuss timeline options at your meeting with officials on 15 December 2021. 9(2)(f)(iv)

34. We seek your direction on your preferred approach and timeline for the review early in the New Year 9(2)(f)(iv)

Recommendations

35. We recommend that you:

a) note the feedback received from targeted engagement sessions held from September to December 2021;

b) note that targeted engagement will continue to the end of March 2022 to enable further meaningful engagement with stakeholders;

c) note that we recommend engaging on a preferred option for the proposed new content regulatory framework, which would have impacts on the review's timeline;

d) 9(2)(g)(i)

e) note that we are available to discuss options for the review's timeline on 15 December 2021 at your regular meeting with officials; and

f) **direct** officials on your preferred way forward for the review, [REDACTED]

9(2)(g)(i)

9(2)(g)(ii)

General Manager, Policy Group

Hon Jan Tinetti
Minister of Internal Affairs

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Internal Affairs briefing

DOCUMENT 4

Hon Jan Tinetti
Minister of Internal Affairs

Title: Information Briefing – Draft Online Safety Code of Practice

Date: 26 November 2021

Key issues
<p>Netsafe has been leading the development of a voluntary Online Safety Code of Practice (the Code) involving a range of digital platforms 9(2)(ba)(i)</p> <p>The draft Code proposes that signatories commit to a set of guiding principles, outcomes and measures. On 19 November 2021 we provided you with an overview of the Code in the Status Report.</p> <p>To date, the Government has not been involved in the development of the draft Code. 9(2)(ba)(i)</p> <p>9(2)(g)(i)</p>

Action sought	Timeframe
<p>Note the draft Online Safety Code of Practice attached at Appendix A; 9(2)(ba)(i)</p> <p>d</p> <p>9(2)(g)(i)</p>	<p>At your convenience</p>

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
9(2)(g)(ii)	Policy Director – Gambling, Media Content, and Racing	9(2)(g)(ii)	
9(2)(g)(ii)	Policy Manager	9(2)(g)(ii)	✓

Return electronic document to:	9(2)(g)(ii)
Cohesion document reference	SS74WDQEK3HX-838143529-78
Ministerial database reference	IA202101842

Purpose

1. This briefing provides you with an overview of the draft Online Safety Code of Practice (the Code) attached at **Appendix A** being led by Netsafe 9(2)(g)(i) [REDACTED]

The Code is voluntary and being developed for digital platforms that provide online content services to people in New Zealand

2. Netsafe is an independent, non-profit online safety organisation that has been leading the development of a voluntary Online Safety Code of Practice. On 19 November 2021 we provided you with an overview of the Code in the Status Report. The development of the Code has involved a range of digital platforms 9(2)(ba)(i) [REDACTED]
3. The Code proposes that signatories commit to a set of guiding principles, outcomes and measures. These are focused on seven themes involving safety and harmful content, including:
 - 3.1 preventing child sexual exploitation and abuse;
 - 3.2 bullying and harassment;
 - 3.3 hate speech; and
 - 3.4 misinformation/disinformation.

The Government has not been involved in the development of the Code

4. 9(2)(ba)(i) [REDACTED]

9(2)(f)(iv), 9(2)(g)(i) [REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

9(2)(f)(iv), 9(2)(g)(i)

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Next steps

16. We have provided your office with some material to support any queries from media on this issue and we will keep you updated on the progress of the public consultation.

17. The Code is one of many matters that we will continue to keep an eye on as we develop policy proposals for the Review. We will be providing you with a briefing on the development of the Review in early 2022, which will include an update on the progress of the Code.

Recommendations

18. We recommend that you:

a) **note** the draft Online Safety Code of Practice attached at **Appendix A**;

b) 9(2)(ba)(i)

c) 9(2)(g)(i)

9(2)(g)(ii)

Policy Director – Gambling, Media Content, and Racing

Hon Jan Tinetti
Minister of Internal Affairs

_____/_____/_____



Internal Affairs briefing

DOCUMENT 7

Hon Jan Tinetti
Minister of Internal Affairs

Title: **Information briefing: International Regulatory Frameworks for Online Content research report**

Date: 23 February 2022

Key issues

We will be considering international regulatory alignment opportunities in the context of the Content Regulatory Review. International regulatory alignment can potentially help manage the complexities of regulating online content.

We commissioned the research report *International Regulatory Frameworks for Online Content*, to support the identification and assessment of regulatory alignment options. This briefing is to provide a summary of the research.

9(2)(f)(iv)

Action sought

Note that international approaches to regulating online content offer opportunities for international alignment;
note research we commissioned has identified some significant trends in changes to content regulatory systems; and
note this briefing attaches the digest summary version of the report (Appendix B), in case you would like to read a more in-depth summary of the report.

Timeframe

At your convenience

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
9(2)(g)(ii)	Policy Manager	9(2)(g)(ii)	✓
9(2)(g)(ii)	Policy Director	9(2)(g)(ii)	
Return electronic document to:	9(2)(g)(ii)		
Cohesion document reference	SS74WDQEK3HX-838143529-124		
Ministerial database reference	IA202200119		

Purpose

1. You have previously expressed interest in international developments in harm-minimisation regulation for online content. We commissioned research into proposed and recently enacted overseas regulatory frameworks for online content. This research report, titled *International Regulatory Frameworks for Online Content* (the Research Report), has been completed and we are sharing a summary for your information.

Background on the Research Report

2. We commissioned research into the trends of proposed changes to overseas regulatory regimes. Other governments are also seeking to modernise their content regulatory regimes to mitigate the risk of harm posed by online media content. Internationally, there are a number of proposed and recently enacted comprehensive regulatory frameworks for online content. These overseas policy initiatives offer learning and alignment opportunities for the Content Regulatory Review (the Review).
3. In mid-2021, we commissioned Associate Professor, Dr. Peter A. Thompson and Senior Lecturer, Michael S. Daubs, from the Te Herenga Waka—Victoria University of Wellington, to prepare a research report on international frameworks for online content. We have received the final report.
4. The report analyses four current or recent international regulatory initiatives to address online content:
 - i. Australia: Online Safety Act 2021;
 - ii. Canada: Proposed Online Harms Legislation including Bill C-36;
 - iii. Ireland: Online Safety and Media Regulation Bill; and
 - iv. The UK: Draft Online Safety Bill.
5. The report describes the nature and context of each initiative and identifies potential benefits and risks of New Zealand adopting aspects of these regulatory approaches. **Appendix A** is a brief overview and a comparison table of the regulatory frameworks. **Appendix B** is a digest version of the report, in case you would like to read a more in-depth summary of the report.
6. The research provides a snapshot of the proposed changes between July 2021 to November 2021 and it is anticipated that the proposed frameworks will change when and if they are formally implemented.

Overseas policy initiatives offer learning and alignment opportunities, which could increase the effectiveness of regulations

7. The four regulatory frameworks analysed in the report are at different stages of development. Australia's Online Safety Act was enacted in January 2021, and the three other frameworks are at varying stages of development. The effectiveness and unintended consequences of these proposed and recently enacted overseas regulatory frameworks will not be known for some time. Because the Review is still in its early stages, there are opportunities for us to learn from their approaches and stakeholder reactions to these regulatory frameworks.
8. Regulating online content is complex because:
 - the borderless nature of the online environment poses challenges to enforcement;

- the scale and dynamic nature of online content makes it administratively challenging to apply rules consistently and quickly; and
- online content-sharing platforms are the primary means of access to information, political discussion and political organisation for many people. As a result, there are intricate challenges to regulating certain types of content whilst preserving freedom of expression.

Given our population size, these challenges may be particularly acute for New Zealand. There is an opportunity to manage these complexities by aligning aspects of the proposed regulatory framework for online content with that of other jurisdictions.

There are costs to regulatory alignment, but they can be managed by working with international partners.

9. There may be a trade-off between the benefits of international alignment and a regulatory response tailored to New Zealand's circumstances. The Treaty of Waitangi is a unique feature of the New Zealand context. Furthermore, New Zealand values and norms differ to those held in other countries and as a result, aligning our regulatory framework for online content may mean compromises regarding normative decisions over what speech is permissible.

Summary of the Research Report

Key commonalities across the four frameworks

- There is a trend towards consolidating regulator power in a single government entity.
- There is an acknowledgement that industry self-regulation for online content is insufficient and movement towards increasing the Government's role in regulating online content, including through co-regulatory arrangements.
- All four frameworks allow for site blocking and content takedown requests for extreme cases.
- All four frameworks have processes to challenge decisions to restrict access to or remove content taken down by service providers.
- The proposed frameworks all include some form of transparency reporting. Transparency requirements include information regarding the risks and harms present on online platforms, the steps taken to minimise those risks and harms, and the actions and decision-making processes of regulators.

Common challenges in the design of the frameworks

- A common concern raised by civil society, open internet advocacy groups and academics, among others, is how to balance attempts to limit harmful content and hate speech with ensuring freedom of speech for everyone online.
- One of the implicit challenges evident in the development of the four frameworks is how to define what is (or is not) harmful content.
- Forms of engagement that could be considered harmful in some contexts may be both legal and legitimate in others. Ensuring that content regulation frameworks do not infringe upon these forms of expression is another challenge that each of the four frameworks attempt to address.

- A common concern of civil society groups is how content regulation frameworks will affect minority, marginalised and at-risk communities in unintended ways. Content regulation frameworks and systems are often abused to attack the very marginalised communities they are meant to protect. The four frameworks examined this issue to varying degrees.

We are engaging with our international partners on our respective frameworks

10. The Department already has strong existing relationships with international Government agencies in the online harms space, particularly in relation to the Five Countries and at the operational level. We have been leveraging these existing relationships to engage on the Review and their respective proposed or enacted frameworks.

11. 9(2)(f)(iv) [Redacted]

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Recommendations

12. We recommend that you:

- a) **note** that international approaches to regulating online content offer opportunity for international alignment;
- b) **note** research we commissioned has identified some significant trends in changes to content regulatory systems; and
- c) **note** this briefing attaches the digest summary version of the report for your information (**Appendix B**).

9(2)(g)(ii)



Policy Manager

Hon Jan Tinetti
Minister of Internal Affairs

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Appendix A: Overview and comparison table of the international frameworks

Australia's Online Safety Act 2021

Australia's Online Safety Act 2021, which took effect on 23 January 2022, establishes a co-regulatory approach to online harms, where:

- industry is tasked with developing codes and reporting and complaints mechanisms regarding this harmful content; and
- government has added powers to intervene when industry codes are found to be ineffective or insufficient.

Canada's proposed Online Harm Legislation

Canada's proposed approach to address harmful content is still in an early stage of development. The proposed approach is to introduce a new social media regulatory framework, which would impose a set of rules and obligations on online communication services. It would require transparency reporting on the amount and types of harmful content on these platforms.

Ireland's Online Safety and Media Regulation Bill

The Bill would establish a new regulatory entity, the Media Commission, for linear/broadcasting (subsuming the current Broadcasting Authority of Ireland functions), on-demand audio-visual media services and online video-sharing services.

UK's Draft Online Safety Bill

The Bill would establish a statutory regulatory framework to address illegal and harmful online content based on a duty of care model for online content-sharing platforms and search engines. The duty of care model places obligations on platforms to embed risk-reduction mechanisms into their processes and policies to take responsibility for the safety of the users on their platform.

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Features of proposed regulatory frameworks	New Zealand's current system	Australia's Online Safety Act 2021	Canada's proposed Online Harm Legislation	Ireland's Online Safety and Media Regulation Bill	UK's draft Online Safety Bill
Consolidating regulatory power for content safety a) for both traditional media and online content b) for online content	Multiple regulators in the media content regulatory system, including multiple regulators for online content.	Multiple regulators in the media content regulatory system. One primary regulator for online content.	Multiple regulators in the media content regulatory system. One primary regulator for online content.	One primary regulator for both traditional and online content.	One primary regulator for both traditional and online content.
Regulatory Model	Government and self-regulatory models within the online content regulatory system.	Co-regulatory model. Industry develops codes, government has oversight and can step in if industry codes are ineffective or insufficient.	Government regulatory model.	Mostly government regulatory model with co-regulatory aspects. Principles-based codes which industry determines how to implement.	Mostly government regulatory model with co-regulatory aspects. Principle-based codes which industry determines how to implement.
Transparency requirements for online content providers	No.	Yes.	Yes.	Yes.	Yes.
Blocking and take-down notices	For extreme cases, take-down notices can be issued, but not blocking.	For extreme cases, at the discretion of the regulator.	For extreme cases, at the discretion of the regulator.	For extreme cases, requires a court order to have content blocked.	For extreme cases, the regulator can issue warnings, but requires a court order to have content blocked.

Complaints and redress processes for restriction or removal of online content	Yes.	Yes.	Yes.	Yes.	Yes.
Progress toward new regulatory framework	The Content Regulatory Review is at the early stages. No proposals have been made yet.	Come into effect Sunday 21 st January 2022.	At the early stage of development. Public consultation took place late 2021.	The Bill has been published, and is currently before Parliament.	The draft Bill has been published and has been scrutinised by a Joint Committee of both Houses and is planned to be before Parliament sometime in 2022.

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Appendix B: International Regulatory Frameworks for Online Content Digest Report

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Internal Affairs briefing

DOCUMENT 8

Hon Jan Tinetti
Minister of Internal Affairs

Title: **Content Regulatory Review timeline**

Date: 4 March 2022

Key issues
We met with you on 15 February 2022 to discuss your priorities for the Content Regulatory Review (the Review). 9(2)(f)(iv), 9(2)(g)(i)
We are also seeking your approval to cancel an outstanding report-back on the Review.

Action sought	Timeframe
Agree to the adoption of the process and timeline detailed in the briefing and in Appendix A for the Review; agree to cancel the outstanding report-back on the Review; 9(2)(f)(iv), 9(2)(g)(i) agree to forward this briefing to Hon Kris Faafoi, Minister for Broadcasting and Media, for his information.	At your convenience

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
9(2)(g)(ii)	General Manager Policy Group	9(2)(g)(ii)	
9(2)(g)(ii)	Policy Manager	9(2)(g)(ii)	✓
Return electronic document to:	9(2)(g)(ii)		
Cohesion document reference	SS74WDQEK3HX-838143529-147		
Ministerial database reference	IA202200150		

Purpose

1. We are seeking your approval on a proposed timeline for the Content Regulatory Review (the Review) and to cancel an outstanding report-back on the Review. [REDACTED]

9(2)(f)(iv)

Background

9(2)(f)(iv), 9(2)(g)(i)

Stages of the Review

6. 9(2)(f)(iv)

Phase 1: Defining the scope and scale of the problem to be addressed

7. The first phase seeks to refine the problem definition by building an evidence-base and confirming the scope of the Review. This includes identifying and understanding the harms New Zealanders experience from interacting with content, which will assist in prioritising issues for the Review.
8. Phase 1 of the Review is centred around targeted engagement and is planned to be completed in April. This has already built us a rich resource of qualitative information on New Zealanders' experiences with harm. We will supplement this information with other evidence of sources of harm to develop a more comprehensive problem definition. 9(2)(f)(iv)

9(2)(f)(iv)

9(2)(f)(iv), 9(2)(g)(i)



Next steps

16. We will work with your office to cancel the report-back that was due end of February 2022. This is a relatively straightforward process and we do not anticipate any issues.

17. 9(2)(f)(iv) [Redacted]

18. In the May 2021 Cabinet paper to initiate the Content Regulatory Review, it was noted that you would report-back to Cabinet on proposed options for reform, a public engagement plan and public consultation document on the Review by 28 February 2022 (SWC-21-MIN-0072). Due to extending targeted engagement for communities for an inclusive engagement approach and disruptions in the Review's initial timeline, including relating to COVID-19, a report-back at this stage would provide limited value. We recommend cancelling the report back. Subject to your approval, we will work with your office to cancel this report back.

19. 9(2)(f)(iv) [Redacted]

20. We recommend you forward this briefing to Hon Kris Faafoi, Minister for Broadcasting and Media, for his information.

Recommendations

21. We recommend that you:

- a) **agree** to the adoption of the process and timeline detailed in the briefing and **Appendix A** for the Content Regulatory Review; **Yes/No**
- b) **agree** to cancel the outstanding report-back on the Content Regulatory Review; **Yes/No**
- c) **9(2)(f)(iv), 9(2)(g)(i)** [Redacted]
[Redacted]
[Redacted]
- d) **agree** forward this briefing to Hon Kris Faafoi, Minister for Broadcasting and Media. **Yes/No**

9(2)(g)(ii) [Redacted]

Policy Manager

Hon Jan Tinetti
Minister of Internal Affairs

_____/_____/_____

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