

# Legal Update

## A Review of the Regulatory System for Media and Online Platforms

July 2023

*The New Zealand Government is trying to change the way it regulates media and online platforms to create a safer online environment for New Zealanders – but can it work?*

*The New Zealand Government is seeking feedback on its review of the current regulatory system for media and online platforms. The objective of the review is to enhance protection for New Zealanders by reducing their exposure to harmful content, regardless of delivery method.*

### CURRENT LEGISLATION

The main pieces of legislation which govern media and online platforms are the Films, Videos and Publications (**Classification Act**) 1993 and the Broadcasting Act 1989 – both of which are over 30 years old. Although generally relevant, these Acts do not have the reach and tools to deal with the online world.

### PROPOSAL

The government aims to provide better protection for vulnerable groups and achieve better consumer protection for all New Zealanders.

The way the government is proposing to achieve this is by:

- creating codes of practice that set out specific safety obligations for larger or riskier platforms.
- putting in place an independent regulator to enforce and approve those codes.

The discussion document can be viewed at: [https://www.dia.govt.nz/diawebsite.nsf/Files/online-content-regulation/\\$file/Safer-Online-Services-and-Media-Platforms-Discussion-Document-June-2023.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/online-content-regulation/$file/Safer-Online-Services-and-Media-Platforms-Discussion-Document-June-2023.pdf).

An executive summary of the discussion document can be viewed at:

[https://www.dia.govt.nz/diawebsite.nsf/Files/online-content-regulation/\\$file/Safer-Online-Services-and-Media-Platforms-Executive-Summary-June-2023.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/online-content-regulation/$file/Safer-Online-Services-and-Media-Platforms-Executive-Summary-June-2023.pdf).

### NEW CODES OF PRACTICE

The new codes of practice would:

- cover things like how platforms should respond to complaints and what information they should provide to users.
- set out the standards and processes platforms need to manage regarding risks to consumer safety, such as protecting children and dealing with illegal material and regulating content that promotes terrorism.

The new codes would be developed by industry groups with input from and approval by the new independent regulator.

The intention is that adopting these codes would allow editorial decision-making to remain in the hands of the relevant platforms while ensuring that users of those platforms have greater transparency and protection.

### NEW INDEPENDENT REGULATOR

The proposed new independent regulator would operate separately from the government to promote safety on online and media platforms.

The government envisions that the new regulator would work with platforms to create a safer environment and would require larger or high-risk platforms to comply with codes of practice.

### PROBLEMS WITH THE GOVERNMENT'S PROPOSAL

Although the objectives of the government's review of the current regulatory system for media and online platforms are well-intentioned, it is difficult to understand how the proposed changes will work in practice – especially given that what is deemed “safe” online content is often subjective and depends on the context.

For example:

- What will happen if a platform's view of what is “safe” differs from the regulator's view? Will platforms remove that information or simply cease to operate in New Zealand?
- Will a regulator need to police its platform to ensure that only content deemed “safe” is made available to New Zealand users (even if it is deemed safe in other countries)?
- How will the proposed changes address jurisdictional issues – for example - if a user based in New Zealand accesses material deemed “unsafe” in New Zealand using a VPN?
- How will online content be policed? Will the regulator investigate complaints by users or undertake its own reviews of online content available in New Zealand?

### CLOSING DATE OF SUBMISSIONS

- We recommend that New Zealand businesses consider the effect that the review of the current regulatory system – and the government's proposals - could have on their business, especially as businesses move increasingly online.

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As these effects could potentially impact on a business (both from a compliance perspective and their day-to-day operations), we also recommend that New Zealand businesses consider making a submission on the review. Submissions close on Monday, 31 July 2023 NZST.

A link to the various options for making submissions can be found at: <https://www.dia.govt.nz/safer-online-services-media-platforms-consultation>.

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