

# **Submission: Department of Internal Affairs' Safer Online Services and Media Platforms Public Consultation**

**Submitted by the Mental Health  
Foundation of New Zealand**



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## Submission on the proposed approach to regulating online services and media platforms in New Zealand

Tuia te rangi e tū nei  
Tuia te papa e takoto nei  
Tuia i te here tangata  
Tīhei mauri ora

He hōnore, he korōria ki te atua ki te runga rawa  
He whakaaro maha ki a rātou kua haere ki te wāhi ngaro  
Rau rangatira mā, ānei ngā whakaaro me ngā kōrero nā Te Tūāpapa Hauora  
Hinengaro

### Introduction

The Mental Health Foundation of New Zealand (MHF) is a charity working towards creating a society free from discrimination, where all people enjoy positive mental health and wellbeing. Our interest in this consultation stems from our concern about content shared online and in other media increasing the risk of suicide, self-harm, trauma, distress, discrimination and prejudice, amplifying bullying and harassment, or otherwise harming the mental health of New Zealanders.

The MHF was involved in the initial targeted engagement in September 2021, and we maintain the view that Aotearoa needs to act to better regulate non-traditional media. Through our work in suicide prevention and postvention, anti-discrimination, and bullying prevention (including leading the national anti-bullying Pink Shirt Day

campaign), we have observed the real and growing harms experienced from content – including content that explicitly or implicitly incites, counsels or procures people to die by suicide or engage in self-harm, groups such as the rainbow community being targeted by hate speech, bullying and harassment online, and a proliferation of online content that stigmatises mental distress and those who experience it. We have also found the processes to deal with unsafe content to be confusing, slow, and lacking effective outcomes (such as consequences and meaningful disincentives for platforms).

We believe it is timely and necessary to update our approach to regulating media and online content, to ensure our approach is applied consistently, to better protect users and audiences from harm, and make it easier for the public to protect themselves and access effective reporting and complaints processes.

### **Summary of recommendations**

1. Embed Te Tiriti o Waitangi.
2. Ensure the new system has effective and representative advice, review, governance and decision-making processes built in.
3. Expand the definition of unsafe and harmful content.
4. Educate consumers, creators and platforms on potential harms.
5. Make compliance investigation results and other reports available to the public to aid consumer awareness and disincentivise non-compliance.
6. Extend existing takedown powers to material that has been found to be illegal under other New Zealand legislation.
7. Name and resource the body responsible for filtering and removing objectionable content, and its specific responsibilities.
8. Improve processes for content that is harmful but not illegal, prioritising secondary prevention and rapid response over 'remedial' measures.

### **Our primary areas of expertise and concerns**

Suicide prevention and postvention has been a primary area of work for the MHF for many years, through our broader programme of positive mental health and wellbeing promotion as well as more focused work, which includes:

- providing resources to support people worried about their own or someone else's suicide risk and resources to support people after a suicide death, including resources targeted to specific audiences such as whānau, Māori and young people;
- coordination of the national Suicide Bereavement Advisory Group and the Engaging Media on Suicide Reporting service; and
- close work with the Suicide Prevention Office, Chief Coroner's Office, and a range of NGOs, government organisations and networks of suicide prevention and postvention coordinators.

We are aware through our role that many people in Aotearoa, including young people, have been exposed to distressing livestreams depicting suicide and self-inflicted harm in graphic detail. Exposure to content related to self-harm and suicide increases the risk of suicide and self-harm behaviours, especially when such content clearly describes methods.<sup>1</sup> Normalising or positively portraying these acts, such as by describing them as inevitable consequences of specific circumstances, can also contribute to their incidence.<sup>2</sup> Many kinds of content can carry this risk, ranging from unintentionally harmful instances, such as individuals sharing their own experiences of distress online or making comments about a suicide event in unsafe ways (which can trigger copycat behaviour without explicitly inciting it), to deliberate and malicious content such as 'pro-suicide' forums and the marketing of products to aid suicide.

The cumulative impact of this content is also a concern. Even when it falls at the lower-risk end of the spectrum, the sheer volume and speed at which unsafe content relating to suicide and self-harm is shared and sometimes algorithmically 'pushed'

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<sup>1</sup> New Zealand Law Commission. (2014) *Suicide Reporting* (NZLC R131, 2014). <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R131.pdf>; Susi, K., Glover-Ford, F., Stewart, A., Knowles Bevis, R. and Hawton, K. (2023). Research Review: Viewing self-harm images on the internet and social media platforms: systematic review of the impact and associated psychological mechanisms. *J Child Psychol Psychiatr*, 64: 1115-1139. <https://doi.org/10.1111/jcpp.13754>.

<sup>2</sup> Stack, S. (2003). Media coverage as a risk factor in suicide. *Journal of epidemiology and community health*, 57(4), 238-240. <https://doi.org/10.1136/jech.57.4.238>; Ministry of Health. (1999). *Suicide and the media: The Reporting and portrayal of suicide in the media: A resource*.

<https://www.health.govt.nz/system/files/documents/publications/suicideandthedia.pdf>

by platforms can contribute to normalising these behaviours and increasing their incidence, as well as causing general distress.

## **Our recommendations for the new content regulation system**

Overall, the MHF supports a more effective regulatory framework to prevent the creation of content that increases the risk of suicide and self-harm and to enable the swift removal or blocking of access to such material if it is published.

### **A. Recommendations for an effective and fair regulatory system**

#### **1. Embed Te Tiriti o Waitangi**

The MHF recommends core elements of the regulatory system embed Te Tiriti of Waitangi, including the high-level safety objectives, policy statements on minimum expectations (regulations), legislation, and the governance, decision-making and operations of the regulator. This should be as explicit and specific as possible, citing the articles of Te Tiriti and how they apply across the system. We expect this would include (but not be limited to) co-designing the new system with Māori, a minimum of 50 percent Māori representation on the board of the new regulator, embedding advisory groups to provide input into the development and implementation of codes of practice and regulator decision-making, and defining racism, discrimination and other harms Māori experience from content (as recommended below).

#### **2. Ensure the new system has effective and representative advice, review, governance and decision-making processes built in**

To ensure flexibility of the system while safeguarding and addressing the needs of communities most affected by harmful content, the MHF recommends embedding, in law, processes for input from tangata whenua, legal and technology experts, young people and communities most likely to be affected by harmful content (listed in recommendation 3). It is important that these communities are actively involved in

all aspects and levels of the system's development, implementation and maintenance, and that this is entrenched in law.

## **B. Recommendations to prevent harmful content creation**

### **3. Expand the definition of unsafe and harmful content**

The MHF recommends that the current definition of unsafe and harmful content be widened, with more detail and examples given, while remaining sufficiently flexible to capture emergent forms of harm. We expect that more detail and examples will assist platforms and/or industry bodies to understand the range of harms that can be experienced from content, and to develop codes of practice appropriate to prevent them.

Specifically, we recommend:

- Expanding the definition of harmful and unsafe content to specifically describe different forms of harm, their effect, and examples of how content can cause these harms. This should include, but not be limited to harm to physical, social, emotional and wellbeing, promotion of suicide and self-harm, and cultural harm. Racism, discrimination, hate speech, bullying and harassment should also be clearly defined and demonstrated with examples. Making clear the specific types of harm experienced by Māori, and/or how content particularly harms Māori, would also help to address these harms.
- Explicitly listing the rights that apply (and at least all rights as listed in the Human Rights Act 1992) and examples of how content could result in their damage or loss.
- Naming the communities most likely to experience harm from content. The discussion document does mention that groups such as community and minority groups, Asian and Pacific peoples, Māori, and women, including wāhine Māori, experience more harm including discrimination or hate speech and harassment. The MHF recommends also acknowledging the rainbow community (and especially trans people), religious minorities, and people with lived/living experience of mental distress as communities at particular risk.

- Acknowledging in the new framework the promotion and marketing of certain products as harmful content, including alcohol, tobacco, and gambling products. We are aware of the alcohol industry exploiting user-generated content (such as affiliate marketing and sponsored content) to circumvent restrictions on direct advertising and this review is an opportunity to also prevent user-generated promotion of harmful products, particularly to young people.

#### **4. Educate consumers, creators and platforms on potential harms**

We support the proposal to expand education in the new system. This should focus on helping people manage both the content they are exposed to, as well as the content they generate. Raising awareness of how references to mental distress (such as disordered eating, self-harm and suicide behaviours) may cause harm might, in turn, support and encourage users to create more responsible content.

This is especially important for users and platforms with large followings, including traditional media, where the way mental distress and suicide are reported on and framed can (often unintentionally) influence negative attitudes about people with mental distress and contribute to stigma and discrimination. The MHF has seen this most commonly in reporting on mental health-related crime events and forensic mental health cases.

#### **5. Make compliance investigation results and other reports available to the public to aid consumer awareness and disincentivise non-compliance**

The MHF advocates for the public availability of information, such as the results of compliance investigations, to serve as a disincentive for non-compliance and to promote public awareness of platforms that are failing to protect users from harmful content. We note that under the current broadcasting regulations, breach notices and investigations by the Broadcasting Standards Authority are mainly known only to the industry, despite being in the public interest.

## C. Recommendations to promptly respond to harmful content

We have heard from people trying to monitor traditional media and other platforms for suicide-related content that they have often felt disempowered by the reporting processes available and the response. It is not always clear where reports should be made, thresholds for removing or blocking content differ across platforms, and even when met, can be ignored or actioned too slowly by platforms. Overall, there is no clear locus of responsibility for monitoring the entire system for unsafe content.

### **6. Extend existing takedown powers to material that has been found to be illegal under other New Zealand regimes**

This should include the Harmful Digital Communications Act 2015, the Human Rights Act 1993, and the Coroners Act 2006, and carry over the Films, Video and Publication Classifications Act 1993 description of objectionable content.

### **7. Name and resource the body responsible for filtering and removing objectionable content, and its specific responsibilities**

The discussion document states that the current system empowers the Department of Internal Affairs to issue takedown notices requiring online content hosts to remove or prevent access to publications that meet the threshold for objectionable content, and that this power would transfer to the new regulator in the new system. We have heard from colleagues that the locus of responsibility for scanning and identifying objectionable content beyond child exploitation and extreme violence (which is currently undertaken by the Department) is unclear. We have heard that clearly objectionable content (including that relating to suicide) has failed to be dealt with due to this lack of clarity.

We therefore recommend the new regime clearly and explicitly name the body responsible (which we expect will be the new regulator) and its specific responsibilities in this regard, and resource and empower it so that proper filtering and blocking of all objectionable content can occur. We expect this would include expanding and improving the Digital Child Exploitation Filter System, developing



filters for other objectionable content, and the power to mandate internet service providers to block objectionable content.

### **8. Improve processes for content that is harmful but not illegal, prioritising secondary prevention and rapid response over ‘remedial’ measures**

We acknowledge the new regulatory regime needs to balance the objective to protect people from unsafe content with the rights to freedom of expression and a free press, and that non-illegal harmful content may need to be managed with less restrictive measures such as warning labels, content advisories, changes to the way algorithms recommend content, and better complaints processes.

Our preference is for the system to prioritise secondary preventative measures such as targeted moderation practices, using artificial intelligence to detect and downrank harmful content, and ensuring recommendation algorithms do not actively push harmful content.

We still see reporting, complaints and investigation processes as crucial to the system, however, in the current system these measures are too slow to take effect before harm has occurred and spread.

## **D. Other considerations**

**Aggregate harms:** As discussed above in relation to suicide and self-harm, the MHF is concerned about the cumulative impact of harmful content where large numbers of people are exposed or where individuals are exposed to high volumes of harmful content. We suggest the review investigate how this can be managed through codes of practice, education or other measures.

**‘Brigading’ and similar practices:** The MHF is concerned about the use brigading, review bombing and similar tactics to harass and spread hate speech. Our Pink Shirt Day social pages, for example, have received ‘reviews’ spreading anti-trans rhetoric, in response to our public support of the rainbow community. These are often unable to be removed by page administrators, and/or can be impractical to manage when dispensed in high volumes. It would help if regulated platforms had systems to help users manage this.

**Addictive platforms:** The MHF is aware that young people are concerned about platforms that are “designed to be addictive”.<sup>3</sup> We suggest this review explore ways to protect people, especially young people, from platforms exploiting behavioural psychology to drive engagement. This could be addressed through education, promoting tools for self-management or more restrictive measures.

## Summary

Thank you for the opportunity to comment on the Safe Online Services and Media Platforms public consultation. We look forward to seeing progress on this review and are enthusiastic to engage in future, including on the draft legislation when presented.

Mauri tū, mauri ora,

**Shaun Robinson**

Chief Executive

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<sup>3</sup> Whāraurau. (2023). *DMC Youth-Informed Transformation Report 2022*.

<https://wharaurau.org.nz/sites/default/files/Projects/YCA/Resources/PDF/DMC%20Youth%20informed%20transformation%20report.pdf>.

## **About the Mental Health Foundation**

The MHF's vision is for a society where all people flourish. We take a holistic approach to mental health and wellbeing, promoting what we know makes and keeps people mentally well and flourishing, including the reduction of stigma and discrimination (particularly on the basis of mental-health status).

The MHF is committed to ensuring that Te Tiriti o Waitangi and its Articles are honoured, enacted, upheld and incorporated into our work, including through our Māori Development Strategy. We are proud that Sir Mason Durie is a Foundation patron.

The MHF takes a public health approach to our work, which includes working with communities and professionals to support safe and effective suicide prevention activities, create support and social inclusion for people experiencing distress, and develop positive mental health and wellbeing. Our positive mental health programmes include Farmstrong (for farmers and growers), Getting Through Together (the national wellbeing promotion programme in response to COVID-19, in partnership with Canterbury DHB Public Health Unit) All Right? (supporting psychosocial recovery in Canterbury, Kaikōura and Hurunui), Pink Shirt Day (challenging bullying by developing positive school, workplace and community environments) and Open Minds (encouraging workplaces to start conversations about mental health). Our campaigns reach tens of thousands of New Zealanders each week with information to support their wellbeing and help guide them through distress and recovery.

We value the expertise of tāngata whaiora/people with lived experience of mental distress and incorporate these perspectives into all the work we do.

Established in 1977, the MHF is a charitable trust, and our work is funded through donations, grants and contract income, including from government.