



Te Rau Herenga O Aotearoa | Library and Information Association of New Zealand

## **SUBMISSION TO CONSULTATION ON SAFER ONLINE SERVICES AND MEDIA PLATFORMS**

This submission from Te Rau Herenga o Aotearoa Library and Information Association of New Zealand Aotearoa (LIANZA) discusses the role of libraries as an important stake holding sector in the promotion of a safer experience online for all New Zealanders.

### **ABOUT TE RAU HERENGA O AOTEAROA LIANZA**

LIANZA is the national representative body for the library and information services sector in New Zealand Aotearoa and has provided leadership to the wider library and information profession for over 122 years. With a strong national network, active member communities and volunteer base, an established profile, and strong international connections, LIANZA spans all parts of the diverse library and information sector. This includes public, school, tertiary, health, prison, law, government libraries and other special libraries and information services. New Zealand library and information services, and members provide services to the general public, the education sector, the public service and businesses throughout New Zealand.

LIANZA has worked in partnership with [Te Rōpū Whakahau](#), the professional body supporting Māori working in libraries, for over 25 years. It also maintains a strong relationship with the Te Puna Mātauranga o Aotearoa National Library of New Zealand (National Library). LIANZA maintains close relationships with the School Libraries Association New Zealand Aotearoa (SLANZA) and Public Libraries New Zealand (PLNZ). LIANZA is a member of the International Federation of Library Associations (IFLA) which enables shared standards, systems and networks of library services globally.

### **LIANZA Response to Safer Online Services and Media Platforms**

The Library and Information Association of New Zealand Aotearoa (LIANZA) welcomes the opportunity to provide feedback to Te Tari Taiwhenua Department of Internal Affairs to the questions it asks in the discussion paper *Safer Online Services and Media Platforms in New Zealand*.

LIANZA is committed to promoting principles of freedom of information; uninhibited access to information; freedom of expression; and the protection of library users' privacy.

LIANZA considers that the library sector is a major stakeholder that enables internet access for the delivery of better health, education, business, community and government services. As such

LIANZA endorses and supports, practical and appropriate measures to assist New Zealanders to safely manage their use of online services and media platforms.



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In particular, with reference to the proposed changes in the discussion document *Safer Online Services and Media Platforms in New Zealand*, LIANZA endorses or supports the following;

1. LIANZA endorses the reforms for a safer approach to regulating online media and online platforms.
2. LIANZA supports a consumer protection approach that emphasises keeping people safe online, by reducing the risk of harm occurring.
3. LIANZA supports a proposal to have a single regulator, which would make raising any issues much easier.
4. LIANZA supports better protections online that accord with the New Zealand approach to human rights, including freedom of expression.

LIANZA also, as part of our submission, provides responses to selected questions within the Discussion Document as outlined below:

### **Responses to Questions**

#### **1. What do you think about the way we have defined unsafe and harmful content? (page 18)**

LIANZA submits that the definitions are a useful starting point, but proposes that further elaboration of these definitions is required.

\* There needs to be an element in the definition of 'unsafe' that includes the risk of someone acting upon the content.

\* Addressing harmful content must be proactive, and not a strictly reactive process. Social media platforms are not merely vehicles for one person to share content that is consumed by another. There are very active design choices, driven by profit motives, which means social media companies make particular choices that effectively ensure their users are exposed to contentious content, regularly and systematically. In this regard, the proposed inclusion of 'unsafe content' is welcome.

\* It is also unclear how the cumulative effects of consistently dehumanising, but normalised, content, beneath the threshold of 'harmful' content can be taken into account. A minor statement oft repeated, and then reinforced by stronger statements, can lead to harm. In assessing harm therefore the regulators should look at the cumulation of content, and investigate whether this is a deliberate pattern.

#### **2. Does the way we have defined unsafe and harmful content accurately reflect your concerns and/or experiences relating to harmful content? (page 18)**

LIANZA endorses these definitions in part. There is not enough acknowledgement or accounting for the existing structural differences in power and access to resources in our society. The effect of these



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existing differences means that the potential for harm is much greater for people and groups who are already marginalised in some way. A number of papers from the Disinformation Project website elaborate on this point this, including the paper [Dangerous speech, misogyny and democracy](#). Another key example is found in the [Report of the Royal Commission on the attack on the Christchurch masjidain](#).

#### **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)**

LIANZA agrees that the government should set high-level safety objectives and minimum expectations that industry must meet through codes of practice, only if:

- \* These objectives and expectations should be set with input from society, and be accountable to society.
- \* These objectives should not make marginalised communities/people more vulnerable.
- \* The focus of government needs to be as much on the prevention of harm, as it is on regulation and enforcement.
- \* Accountability and transparency should include public availability of reporting, as well as the data on which that reporting is based.

The [STAR Framework](#) developed by the Centre for Countering Digital Hate could provide a good basis for setting these objectives and minimum standards. This includes the most important elements for achieving high-level objectives: Safety by Design, Transparency, Accountability and Responsibility.

\* Safety by design means that technology companies need to be proactive at the front end to ensure that their products and services are safe for the public, particularly minors.

\* Transparent: There are three key areas where transparency should be prioritised:

- (1) Content recommendation and moderation algorithms;
- (2) Rules enforcement; and
- (3) Economics, particularly related to advertising.

Transparency should include publicly accessible data, complemented by more access via a public API, which can be converted into a broader range of formats. There should be clarity about what meta-data is entered into the API to yield particular results. A live public service has the benefits of being faster, giving broader access, providing a public record, and being harder to falsify or mislead.

\* Accountable: Regulation is most effective where there are accountability systems in place for statutory duties and harm caused, particularly where there is a risk of inaction because of profit motives and commercial factors.

\* Responsibility for companies and their senior executives: The final element of the STAR Framework is responsibility - both social media and search engine companies and their senior executives that



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are responsible for implementing duties under a legislative framework. Responsibility means consequences for actions and omissions that lead to harm.

**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)**

LIANZA submits that the definition of platforms requires further clarification.

The document states that the platform's primary purpose is to make “content available”. This would exclude the now-defunct Trademe forums, which were once a hotbed of viral hate speech and Islamophobia. The definition does not take into account how the platforms of the future may look very different to the platforms of today.

To clarify this definition LIANZA submits that further guidance can be found in other jurisdictions’ legislation. For example, [Australia’s Online Safety Act 2001](#) defines distinct services including: designated internet service; relevant electronic service and social media service.

**8. What types of codes and industry groupings do you think should be grouped together? (page 39)**

LIANZA submits that the types of codes and industry groupings appear to indicate a logical and sensible approach, as long as subsequent changes could be made over time.

**9. Do you think some types of platforms should be looked at more closely, depending on the type of content they have?**

The degree of harm potential should be the trigger for closer watch, which could be based on the reach of the platform or significant harm to any individual.

**11. What do you think about the different approaches we could take, including the supportive and prescriptive alternatives? (page 43)**

The government has already tried the supportive approach and it has failed. We need a prescriptive approach. social media platforms need clear regulations with associated penalties for violating the codes. A prime example of this is Youtube continuing to [recommend harmful content](#).

**13. Do you think the regulator would have sufficient powers to effectively oversee the framework? Why/why not? (page 48)**

LIANZA submits that the regulator requires more powers to oversee and enforce the framework. Many of the largest platforms utilised by New Zealanders are headquartered overseas and frequently ignore New Zealand laws. One such example is the [Christchurch attack resurfacing on Twitter](#).

As long as this new approach aligns with those in other jurisdictions then a breach of New Zealand's codes could also amount to a breach of other countries' codes. The regulators could then work across the jurisdictions to address the harmful content.

#### **14. Do you agree that the regulator's enforcement powers should be limited to civil liability actions? (page 48)**

LIANZA submits that the regulator should not be relying solely on the Police to carry out enforcement, as the NZ Police have been shown to use their discretion to avoid prosecuting people for online behaviour.

#### **15. How do you think the system should respond to persistent non-compliance? (page 48)**

LIANZA supports the existing options of taking enforcement action against persistent non-compliance, such as blocking the websites and suggests the addition of two more responses to persistent non-compliance; 1. Financial penalties that are scaled according to the platform's revenue; and 2. Ability to restrict NZ-based advertising on the platform.

#### **16. What are your views on transferring the current approach of determining illegal material into the new framework? (page 54)**

LIANZA supports the transferring of the current approach of determining illegal materials into the new framework.

#### **17. Should the regulator have powers to undertake criminal prosecutions? (page 54)**

LIANZA supports the empowerment of the regulator to have powers to undertake criminal prosecutions. Otherwise, the regulator would be relying on the Police, which has a poor track record for using discretion to avoid prosecuting people for online behaviour.

#### **18. Is the regulator the appropriate body to exercise takedown powers? (page 56)**

LIANZA supports the regulator as the appropriate body to exercise takedown powers. This function is already performed by the Department of Internal Affairs, so a new regulator would be the natural home for this power.

Decisions about take-down notices should be publicly available, and an appeal process should be built into this. All complaints to the regulator need to be subject to a determination, e.g. the regulator cannot opt not to action a request.

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

## **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)**

LIANZA believes the focus of these powers should be on the prevention of harm, which could mean extending to include for instance misleading medical advertising. However this and the proposal for interim takedown powers, is only supported by LIANZA providing that there is a robust evidential basis for the risk of harm and censorship is not overreaching.

There is concern that the removal of content in advance of a conviction could result in unacceptable imposition on human rights and freedom of information. The process needs to be designed so it cannot be gamed by bad actors, for example groups making mass reports to temporarily take down LGBTQ material.

It is also important that the regulator can act quickly to remove illegal content; but to remove content in advance of a conviction, there must be a very high (clear and publicly available) evidential test where there is either an overwhelming public interest in doing so or a clear risk assessment that concludes serious harm could occur if the content remains available. An injunction would ensure that balance.

## **24. Do you think that our proposals will sufficiently address harms experienced by Māori? (page 69)**

LIANZA submits that, to sufficiently address harms experienced by Māori, having Māori involved in this new regulatory body is required. For this reason, LIANZA supports the need for a formal Māori advisory structure to support its work at the more operational level.

LIANZA also supports kaupapa Māori platforms (for example, Whakaata Māori or iwi radio stations) developing their own codes of practice which would comply with the overall framework but take a te ao Māori perspective to managing safety.

## **25. What do you think about how rights and press freedoms are upheld under the proposed framework? (page 70)**

LIANZA submits that the framework appears to strike a good balance between countering harms, and protecting freedom of speech, freedom of the press, and freedom to access information.

## **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)**

LIANZA submits that in general the proposals sufficiently ensure a flexible approach.

Platforms need to design ways to report all forms of content or abusive users. There are issues where the subject of a complaint does not fit into the platform's predefined categories of grounds for reporting. Though options and avenues for reporting have improved over time, there remain differences in reporting quality. There are no common standards or expectations.



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Members of the public need to have a web-accessible method for lodging complaints that doesn't involve making an account or handing over personal data to the platform.

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