August 2023

To Te Tari Taiwhenua - Department of Internal Affairs,

Please find attached DPA’s submission on Safer Online Platforms and Media Discussion Document

For any further inquiries, please contact:

Chris Ford

Kaituhotuho Kaupapa Here ā Rohe - Regional Policy Advisor (Local Government)

policy@dpa.org.nz

**Introducing Disabled Persons Assembly NZ**

**We work on systemic change for the equity of disabled people**

Disabled Persons Assembly NZ (DPA) is a not-for-profit pan-impairment Disabled People’s Organisation run by and for disabled people.

**We recognise:**

* Māori as Tangata Whenua and [Te Tiriti o Waitangi](https://www.archives.govt.nz/discover-our-stories/the-treaty-of-waitangi) as the founding document of Aotearoa New Zealand;
* disabled people as experts on their own lives;
* the [Social Model of Disability](https://www.odi.govt.nz/guidance-and-resources/guidance-for-policy-makes/) as the guiding principle for interpreting disability and impairment;
* the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) as the basis for disabled people’s relationship with the State;
* the [New Zealand Disability Strategy](https://www.odi.govt.nz/nz-disability-strategy/) as Government agencies’ guide on disability issues; and
* the [Enabling Good Lives Principles](https://www.enablinggoodlives.co.nz/about-egl/egl-approach/principles/), [Whāia Te Ao Mārama: Māori Disability Action Plan](https://www.health.govt.nz/publication/whaia-te-ao-marama-2018-2022-maori-disability-action-plan), and [Faiva Ora: National Pasifika Disability Disability Plan](https://www.moh.govt.nz/notebook/nbbooks.nsf/0/5E544A3A23BEAECDCC2580FE007F7518/%24file/faiva-ora-2016-2021-national-pasifika-disability-plan-feb17.pdf) as avenues to disabled people gaining greater choice and control over their lives and supports.

**We drive systemic change through:**

* **Leadership:** reflecting the collective voice of disabled people, locally, nationally and internationally.
* **Information and advice:** informing and advising on policies impacting on the lives of disabled people.
* **Advocacy:** supporting disabled people to have a voice, including a collective voice, in society.
* **Monitoring:** monitoring and giving feedback on existing laws, policies and practices about and relevant to disabled people.

**UN Convention on the Rights of Persons with Disabilities**

DPA was influential in creating the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),1 a foundational document for disabled people which New Zealand has signed and ratified, confirming that disabled people must have the same human rights as everyone else. All state bodies in New Zealand, including local and regional government, have a responsibility to uphold the principles and articles of this convention. There are a number of UNCRPD articles particularly relevant to this submission, including:

* **Article 3 – General principles**
* **Article 9 – Accessibility**
* **Article 13 – Access to justice**
* **Article 16 – Freedom from exploitation, violence and abuse**
* **Article 21 – Freedom of expression and opinion, and access to information**

**New Zealand Disability Strategy 2016-2026**

Since ratifying the UNCRPD, the New Zealand Government has established a Disability Strategy2 to guide the work of government agencies on disability issues. The vision is that New Zealand be a non-disabling society, where disabled people have equal opportunity to achieve their goals and aspirations, and that all of New Zealand works together to make this happen. It identifies eight outcome areas contributing to achieving this vision. There are a number of Strategy outcomes particularly relevant to this submission, including:

* **Outcome 4 – Rights Protection and Justice**
* **Outcome 5 – Accessibility**
* **Outcome 6 - Attitudes**

# The Submission

DPA welcomes the opportunity to feedback on the Department of Internal Affairs – Te Tari Taiwhenua’s Safer Online Services and Media Platforms Discussion Paper.

DPA appreciated the briefing given by officials on the paper recently to our policy team.

DPA supports the overall aim of managing the growing impact of digital harm from online services and media platforms as these are having significant impacts on the disabled community both here and overseas.

Negative social attitudes towards disabled people act to reinforce the societal stigma and discrimination disabled people face every day. These stigmas are manifested over the internet through both hate speech, harassment and other intimidatory behaviours towards disabled people both online and in other media platforms.

Examples of online hostility towards disabled people can be found on social media outlets including on Facebook and X (formerly Twitter) where posts either on or about disabled people can see some non-disabled people using them to disseminate prejudicial, misinformed, harmful or hateful statements about disabled people.

Harmful attitudes about disabled people can also be conveyed through other media including social media feeds/message boards, digital gaming, books, movies, television/streaming programmes, radio, print and online media.

Below we convey our thoughts on how to refine and improve current online and media platform regulation while having regard to the need to protect the democratic values that everyone, including disabled people, value highly.

It is important to recognise that hate speech, which includes the propagation of misinformation and disinformation about disabled people, Māori, Pasifika, ethnic communities, LGBTI+, religious, gender and other marginalised groups is not free speech as it compromises our ability to participate within the community freely and safely, including in online communities.

We concentrate our submission on the following parts of the discussion document:

* The proposals
* Potential roles and responsibilities of the proposed framework
1. **The proposals**

**1.1: General principles**

DPA supports the general principles and orientation behind the proposed framework. We fully support the need for a single online platform and social media monitoring regulatory body and the concurrent replacement of existing media platform legislation, some of which is over 30 years old.

Over the last thirty years, the rise of the internet and digital media has coincided with the further growth of rights-based campaigns for economic, social, political and cultural inclusion by previously marginalised communities, including disabled people.

The disabled community should not be forced to accept the hatred, abuse, misunderstanding and scams which are directed towards us online.

This is often directed to us in terms of online bullying and harassment which is aimed at either disabled individuals or groups and scams (either financial or romance-based) which often seem appealing to some disabled people given that many live on low incomes and/or experience social isolation.

**1.2: Developing Codes of Practice – protecting disabled people from harm**

DPA believes that the proposed codes of practice are a good place to start in terms of developing agreed community-wide guidelines which enable both the online and media industries to be held to account through robust complaints mechanisms.

We support the idea that the proposed codes of practice should protect children, empower platform users and prescribe safety outcomes and standards for platforms to achieve and ensure that they are held accountable.

DPA would like to see disabled people identified under any new legislation as one of the specific population groups as being at high risk of being subjected to online and media harms with accessible complaints processes made available to everyone, including disabled people.

DPA also supports terms and conditions around codes of practice relating to online platforms and media being accessible to everyone, including disabled people.

**DPA notes that disabled people are already one of the groups identified as being at high risk from online and digital harms under Principle 10 of the Harmful Digital Communications Act 2015.**

|  |
| --- |
| **Recommendation 1:** that disabled people are amongst the specific population groups identified in the legislation as high risk from online and digital harm.  |

|  |
| --- |
| **Recommendation 2:** that all complaints processes relating to online and digital harm should be accessible to everyone, including disabled people. |

Disabled people and disabled people’s organisations should be one of the key community stakeholder groups involved in developing the new standards, regulatory body and codes of practice. This will ensure that the voices of disabled people are included in the new standards from the outset and that they will protect the disabled community to the maximum extent possible from various online and media generated harms.

|  |
| --- |
| **Recommendation 3:** that disabled people and disabled people’s organisations are one of the key community stakeholder groups involved in developing the new standards and regulatory body. |

**1.3: Accessibility of harm prevention and reduction awareness programmes**

DPA fully supports the role of the new regulatory body acting as an educator so that New Zealanders are empowered and informed about how to make good media choices, behave appropriately online and complain when harm is done.

All educational programmes provided by the regulator should be accessible for disabled people. This includes ensuring that educational programmes and resources are made available in accessible formats for disabled and D/deaf communities including Braille, Large Print, New Zealand Sign Language, Easy Read, video and audio formats.

Social and online media education programmes for specific disability demographics such as Deaf, neurodiverse and people with a learning disability should be designed and run as a collaboration between disabled people-led organisations and the new regulator.

Central government should be mindful of its obligations to adequately fund consumer online platform and media responsiveness campaigns too, particularly those aimed at disabled people, Māori, Pasifika, ethnic communities, LGBTI+ communities, older people and other marginalised groups who are at greater risk of exposure to online harm.

|  |
| --- |
| **Recommendation 4:** that social and online education programmes run by the new regulator are made available in ways and formats accessible for disabled people. |

|  |
| --- |
| **Recommendation 5:** that disability-specific social and online media platform education programmes are designed and run as a collaboration between disabled people-led organisations and/or groups and the new regulator. |

Online and social media platform harm reduction education programmes should be extended to all levels of the social and online media industries as well.

Free, ongoing training about current trends in online harm should be developed for businesses, community organisations and others who undertake content creation and moderation duties on social media like Facebook, X and other online media (i.e., organisational websites) whether they be paid staff or volunteers.

Similar training should be available to employees and other stakeholders (i.e., journalists, producers, actors, media owners) within traditional mass media including print, radio and television to ensure that they become more aware and responsive to the needs of communities and individuals who experience online harm and hate as part of their operations.

|  |
| --- |
| **Recommendation 6:** that online and social media platform training around online harm be available to all levels of the social and online media industries, including to content creators and moderators on social media platforms and to employees and other stakeholders within traditional mass media including print, radio and television. |

1. **Potential roles and responsibilities of the new network**

**2.1: Developing the codes – need for disabled community input**

DPA supports the new framework requiring the regulator and other relevant government agencies to be proactive in both monitoring for and remove harmful content.

We favour this as the onus should not be on marginalised groups (including disabled people) or the wider public alone to identify and report instances of harm, discrimination and abuse on online platforms. This aspect is particularly relevant for disabled people who face both greater risks of digital harm and greater barriers to reporting it.

DPA believes that media industries in their development of relevant codes alongside the regulator should be legally required to work closely with the wider community, including the most at-risk communities which include disabled people, to develop strong, comprehensive and robust codes of industry practice.

|  |
| --- |
| **Recommendation 7:** that industry sectors work closely with both the regulator and the wider community, including the most at-risk communities, to develop strong, comprehensive and robust codes of practice. |

DPA supports all types of media including traditional mass media and new social media outlets being brought under the new regulatory regime.

DPA strongly supports the regulator being independent of government and that it be created as an Independent Crown Entity which reports to Parliament through a relevant minister.

**2.2: Reporting and monitoring compliance under the new codes – need for proactive approach by regulator**

DPA supports the new regulator taking a proactive approach to its tasks.

DPA believes that the regulator should have the authority to initiate independent research into issues within the media space, undertake enforcement and prosecutorial actions in collaboration with other relevant agencies (such as Customs, Police and the Human Rights Commission) and regularly advise governments about and review issues relating to online platform and media trends.

|  |
| --- |
| **Recommendation 8:** that the new regulator have the power to initiate independent research and inquiries into issues within the media regulatory space. |

Around research, there should be a proactive approach to the regulator undertaking this in terms of seeking to:

* get ahead of rapidly emerging technologies and evolving social values;
* gathering data about harms experienced that is broken down to specific at-risk groups (and not just use broad categories such as ‘disabled people,’ but break down according to impairment groupings when it comes to disability);
* gathering of anecdotal evidence is important too alongside quantitative evidence from both individuals and groups.

Effectively, the new independent entity should play a similar role as, for example, the United Kingdom’s Ofcom does in being an independent regulator and monitor with the ability to accept and investigate complaints from members of the public and work with civil society to develop, monitor and enforce media industry standards.

DPA believes that reporting requirements need to ensure that the new regulator can develop in tandem with civil society objective, informative, robust reporting templates which can deliver concise information on matters including:

* the number of complaints received,
* who is making them in terms of age, region, gender identity, ethnicity/national origin, sexual orientation, religious affiliation, disability, and
* the nature of the complaint(s) or issue(s) being raised.

DPA supports the adoption of a continuum approach in terms of code enforcement which would range from educating and building capacity through to deterrence and prevention. This would mean that flexible approaches could be taken to ensure compliance by regulated providers meaning that the balance between preventing harm and freedom of expression is maintained.

DPA supports the extension of the current take down notice enforcement mechanism proposed in the document. We believe that take down notices should extend in extreme cases to the censoring of hate speech or harassment based on the grounds of discrimination contained in the Human Rights Act which currently covers discrimination based on racial, ethnic/national identity, age, religious/ethical belief, disability, gender identity, sexual orientation and family/marital status grounds.

DPA believes that a set of national guidelines developed collaboratively by the new regulator in conjunction with industry partners and civil society could outline the instances where there was a cross over between the exercise of free speech into hate speech.

These free speech/hate speech boundary guidelines could then be inserted into all media industry codes.

|  |
| --- |
| **Recommendation 9:** that take down notices are able to be used in extreme cases where hate speech (or other hateful content) is used against groups who are currently covered from discrimination under the Human Rights Act. |

|  |
| --- |
| **Recommendation 10**: that national guidelines be developed by the new regulator outlining the boundaries between the exercise of free speech and hate speech. |

|  |
| --- |
| **Recommendation 11:** that free speech/hate speech boundary guidelines be inserted into all online platform and media industry codes of practice. |

**2.3: Building up the capacity of the new regulator around disability**

DPA has discussed within this submission the need for the disabled community to be prioritised as a societal group which is at high risk of being exposed to media harm.

DPA recognises that in terms of capacity building around disability, the new regulator will have to upskill staff on the issues facing different communities, including the disabled community.

DPA recommends that an advisory group (or groups) be established to advise the new regulator on the issues around digital harm for various communities including disabled people, older people, children/youth/rangatahi, Māori, Pasifika, ethnic communities, LGBTI+, women and others.

|  |
| --- |
| **Recommendation 12:** that the new regulator establish an advisory group to represent communities at greater risk of digital harm including disabled people. |

# Recommendation Summary

**Recommendation 1:** that disabled people are amongst the specific population groups identified in the legislation as high risk from online and digital harm.

**Recommendation 2:** that all complaints processes relating to online and digital harm should be accessible to everyone, including disabled people.

**Recommendation 3:** that disabled people and disabled people’s organisations are one of the key community stakeholder groups involved in developing the new standards and regulatory body.

**Recommendation 4:** that social and online education programmes run by the new regulator are made available in ways and formats accessible for disabled people.

**Recommendation 5:** that disability-specific social and online media platform education programmes are designed and run as a collaboration between disabled people-led organisations and/or groups and the new regulator.

**Recommendation 6:** that online and social media platform training around online harm be available to all levels of the social and online media industries, including to content creators and moderators on social media platforms and to employees and other stakeholders within traditional mass media including print, radio and television.

**Recommendation 7:** that industry sectors work closely with both the regulator and the wider community, including the most at-risk communities, to develop strong, comprehensive and robust codes of practice.

**Recommendation 8:** that the new regulator have the power to initiate independent research and inquiries into issues within the media regulatory space.

**Recommendation 9:** that take down notices are able to be used in extreme cases where hate speech (or other hateful content) is used against groups who are currently covered from discrimination under the Human Rights Act.

**Recommendation 10**: that national guidelines be developed by the new regulator outlining the boundaries between the exercise of free speech and hate speech.

**Recommendation 11:** that free speech/hate speech boundary guidelines be inserted into all online platform and media industry codes of practice.

**Recommendation 12:** that the new regulator establish an advisory group to represent communities at greater risk of digital harm including disabled people.