9 February 2022

Code of Practice for Online Safety and Harms

NetSafe

Introduction

Who we are and what we stand for

1. InternetNZ welcomes this opportunity to submit on NetSafe's proposed Aotearoa New Zealand Code of Practice for Online Safety and Harms ("the Code").

2. Part of InternetNZ's role is to help foster and inform policy conversations about key Internet issues. We stand for an Internet for good, meaning an Internet that is inclusive, safe, and beneficial for people and communities in Aotearoa. Our recent work in this area has included engaging on proposed law changes on hate speech, a framework for regulating digital identity, the government's digital strategy, the ongoing review of media regulation, and this Code. We are also scoping our own community-based research into what diverse people in New Zealand think an Internet for good would look like.

3. A clear message we have heard throughout this work is that steps toward an Internet for good must start by working with communities to build trust. In particular, it is vital to address the concerns of communities who have suffered severe and continued harms from online systems and behaviours. This message was particularly clear, eloquent, and forceful from community voices at the He Whenua Taurikura hui following the Royal Commission of Inquiry into the Terrorist Attacks on the Christchurch Mosques in mid-2021.

Summary of submission

4. Community voices in Aotearoa have for years raised concerns that online services can amplify social divides in ways that harm people and communities. Some of these harms are systemic, meaning they go beyond individuals harming other individuals, and require a systemic response.

5. InternetNZ supports community calls for effective steps to address these harms. We need effective actions responding to these harms. To succeed, these actions must start by working with communities.

6. We think that ultimately a range of different efforts may be needed, including steps by industry, communities, and government. Whoever is making the effort, we think that building trust and legitimacy across people and communities in Aotearoa will be vital for any such effort to succeed. One key step to build that legitimacy, and to ensure that a proposal will address the most pressing problems, is to begin by hearing from the people most affected by harmful behaviours online.

7. The draft Code proposes a framework to respond to harmful behaviours online, with digital platforms that sign on opting into a set of standards, funding NetSafe to administer them, and being held accountable to them.

8. We have a number of significant concerns about the Code. In summary these are:

   a. A design process that put digital services before local communities

   b. Addressing big broad issues with small narrow responses

   c. Gaps in community input throughout the proposed process

   d. Perceived conflicts of interest for the Administrator

9. Underlying all these, our key concern is one of **legitimacy**. We think this process needed to begin by working with local people and communities. Instead, the process so far has put digital services ahead of local communities, in terms of the order of consultation, the ways people are able to participate, and the amount of time offered for input. Community input has only been sought after online services have had the chance to shape a full draft of the Code through a series of workshops.

10. We think that process leaves a legitimacy gap at the foundation of the Code.

The Code cannot work without building legitimacy

Work on the Code needed to start with people and communities

11. We think establishing legitimacy is the foundational issue for a voluntary code to effectively address online harms to people and communities. Such a Code can only succeed if diverse communities and institutions accept it as a useful and appropriate response to the issues it aims to address.

12. The Code proposes to address issues of child sexual abuse material, cyberbullying and harassment, hate speech, incitement of violence, violent or graphic content, misinformation and disinformation. These issues involve a range of serious harms to people and communities. To address them effectively, it is vital that the people and communities affected see the Code as a meaningful contribution to a legitimate and effective response to the harms they suffer.

13. As we understand it, this draft Code was developed by NetSafe and online services through a series of workshops over the middle months of 2021. The initial process proposed to gather community feedback was through written submissions over a six week period covering the summer holiday. This proposed timing and format for community engagement on the Code was totally inadequate, as we and others said at the community hui in December.

14. We are also concerned that the Code has not been developed in partnership with Māori. We understand that the draft Code has been developed with input from expert consultants on Te Ao Māori. However, this is not

representative of Māori communities, and in particular of those who have been most impacted by harmful behaviours and systems online. We know that some of these people most impacted have been in touch with NetSafe, and yet we see no indication that they were invited to participate in the design of the Code.

15. We acknowledge and appreciate the steps NetSafe has taken since then to enable more participation, including the proposal for workshops over February 2022, and an extension of time for us to put in this submission.

16. Our key concern is that this Code started in the wrong place. The process needed to begin by working to understand and address community concerns, in particular the perspectives of the people most affected by the issues covered. Many of these people were gathered at the He Whenua Taurikura hui, which would have been an excellent opportunity to test the idea of such a code, and to invite community participation in workshops to develop it.

Potential conflicts of interest for the Administrator

17. The Code's funding model risks perceived conflicts of interest for the Administrator. The draft Code sets out a model where signatory online services fund the Administrator, who is also meant to hold them to account.

18. Communities are likely to see this flow of funding as limiting the accountability of signatory services and undermining the Code's legitimacy.

The Code cannot proceed until gaps in legitimacy are addressed

19. People and communities in Aotearoa have suffered serious and ongoing harms from the issues the Code proposes to address, and these harms are often made worse by a lack of any effective response or meaningful support from institutions. Establishing legitimacy with people and communities is foundational for the success of any steps to address these issues.

20. As it stands, the Code faces foundational gaps in legitimacy. It does not reflect community needs, because it has not been developed with communities in Aotearoa. The proposed funding model creates a serious risk of perceived conflicts of interest for the Administrator.

21. Given where it started, we have serious concerns about whether the Code can now develop the community trust and legitimacy it would need to succeed.

22. Due to these gaps in legitimacy, we think work on the Code must pause now.

The issues covered demand a high bar for legitimacy

23. We have said that work on the Code must pause to understand foundational issues of legitimacy. We think some of the issues the Code proposes to address raise specific challenges that must be understood.

24. The Code proposes to address issues of child sexual abuse material, cyberbullying and harassment, hate speech, incitement of violence, violent or graphic content, misinformation, and disinformation. These are varied issues which can manifest in a range of ways, with varied effects that require varied responses, all of which need legitimacy with local communities. Where there is severe harm, there needs to be a meaningful remedy. Where there is local contextual nuance, there needs to be a way to respond to that. To succeed, the Code needs to contribute legitimate responses to these harms in the local context.

25. Currently the state of play varies across these issues. Some are covered by existing regulations and reporting mechanisms, and so a key concern is to improve and unify reporting processes for the people who need them most.

26. We think that issues of misinformation, disinformation, and to some extent hate speech, are best understood as challenges to participation and trust in shared community institutions. There is a risk that any response to these issues will itself undermine trust in institutions, worsen social divides (for example when socially marginalised groups get blamed for new rules), or unduly limit good faith and beneficial participation online. For these reasons, we think it is particularly vital that any response to these issues is built with and accountable to local communities who can put these issues in context.

27. Beyond the foundational gaps in the process so far, we do not see adequate mechanisms in the Code to address these issues in ways that are appropriately informed by and accountable to local communities.

28. We think it is better to pause work on the Code than risk confusing or counterproductive steps on these important issues.

Next steps

Pause work on the Code

29. As above, we see foundational legitimacy gaps in the process, funding model, and operation of the proposed Code.

Engage in government and community-led processes

30. We think that the government is best placed to address the issues raised by the Code in a way that is responsive and accountable to the needs of local

communities. We will be using our voice to strongly encourage the government to work on these issues in that way.

31. Instead of proceeding with the Code, we call upon NetSafe and the online services involved to engage in government processes, and in particular to listen to community voices and concerns in those forums.

32. Despite our serious concerns with the process so far, we do think there is potential for a future code to become a part of Aoteroa's response to harmful behaviours and systems online. We think the best path for any future code is is to start by engaging with the perspectives and needs of communities, and to work through government-led processes which can bring together a range of people and organisations, and which can identify how a combination of community-based, regulatory, and industry-led approaches might work together in responding to these harms.

Conclusion

33. Our submission has raised some serious concerns which may be challenging to hear, so we would like to conclude with some words of support and agreement. We agree that the serious issues raised by the Code must be addressed. We support steps by online services, and organisations like NetSafe and ourselves, as well as by governments, as part of responding to these issues.

34. We look forward to engaging on that work in a way that is founded in and responsive to the needs and concerns of people and communities in Aotearoa.

35. We intend to share this submission with the Prime Minister, the Minister of Internal Affairs, and the Minister of Justice. When we do, we will reiterate our view that policy processes addressing these issues are best approached in a way that is responsive to the needs of local communities, which brings together other players including online services to better understand and meet those community needs, and which sets an expectation that all players will support a shared dialogue and a coordinated response to these issues.

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