



## Scoping the media review - a discussion paper

The Government is looking to review and modernise policy and regulation governing broadcasting and media in New Zealand. As part of the domestic policy response to the Christchurch mosques terrorist attacks, it was proposed that social media be included in the review. Electoral advertising has also been considered for inclusion.

In our discussion document [The information ecosystem, "online harms" and the media review](#) we recommended taking a broad and inclusive approach to considering the scope of the review, with a view to a collaborative and joined up response. This paper is about what to do next. Below we summarise our recommendations on approach, then set out our preliminary thoughts on how to scope the media review.

### We recommend a broad first principles approach

The Internet has caused the media landscape to become far more complicated than the current mix of media regulation in New Zealand can handle. We have laws that govern the classification of content, but not how that content is amplified and served up to people. Current regulation targets those who have traditionally created and communicated content to the masses, but now new kinds of actors provide platforms and services for anyone to create, share and engage with content.

Tinkering with current regulatory regimes will not be enough. We need to grasp the opportunity to take a broad first principles approach to considering the information ecosystem as a whole, and to reimagine a healthy information ecosystem for the 21st century.

### Do a broad scoping and plan, followed by an achievable “bite”

The information ecosystem involves complex and interconnected issues that span the remit of a number of government agencies and varied actors outside government.

We advocate a staged approach within this broader context:

- First, understand the broader information ecosystem and identify the fundamental problems people really care about.
- Second, map out a plan to address these issues.
- Third, scope an impactful short term work programme to make progress in selected areas.

This approach will allow early progress on meaningful work, while ensuring the work sits within a broader joined-up strategy and framework.

We think the **first stage of work** is to understand the information ecosystem. We have some preliminary thinking on how to frame the goals of this work, starting with what a healthy ecosystem looks like and what the government's role is in achieving this - see Appendix 1. We also offer a draft terms of reference that illustrates the potential scope of this piece of work, attached in Appendix 3. We welcome comment on these drafts.

The **second stage of work** is to map the issues and understand where they sit. An example of how this mapping could be done is illustrated in Appendix 2. Mapping the issues is useful for many reasons. For example, it identifies the basket of issues that sit within the broad scope of the media review; the first "bite" can be identified from within this grouping (the **third stage of work**), and a work plan can be formed for the remainder.

## A joined up approach - and response - is critical to success

The issues in this space are complex and will need a complex response. There will be a role for government, industry, community and individuals, not just in understanding problems and identifying objectives, but also in crafting solutions. Such solutions will need to be focussed across all actors and at all levels from individual to systemic.<sup>1</sup> A joined up and inclusive approach will support better outcomes at every stage of this process.

The map in Appendix 2 identifies examples of government areas that are key to achieving broader information ecosystem objectives, and that are connected to the media review but that fall outside its scope. We think it would be helpful to identify how to support coordination and communication between government bodies responsible for the connected issues in the information ecosystem, so that agencies can develop responses that work together towards shared objectives. It may also be useful to identify a lead agency or body.

The borderless nature of the Internet means that New Zealand will need to work internationally to develop effective responses to some issues in the information ecosystem. The government's broader work plan may therefore need to include identification of the best international forum(s) and vehicle(s) for this alignment.

Engagement with groups that are disproportionately affected by problems in the information ecosystem, with technical experts and researchers who understand how the ecosystem works, and with commercial and community-based actors already working successfully on information ecosystem issues, will be critical to the process. We strongly encourage the government to set up a process for genuine and broad engagement with these groups.

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<sup>1</sup> In June 2020, InternetNZ published a paper that provides a snapshot of 20 global policy approaches that are available to address harmful online content and conduct: [Regulatory tools to address harms from content and conduct online](#).

# Appendix 1 - framing

## Understanding the information ecosystem: where to start?

We think that understanding the information ecosystem involves articulating what a healthy ecosystem looks like, and what the role of government is in supporting that ecosystem. Below is our preliminary thinking on these framing questions.

### What does good look like?

We consider that a healthy information ecosystem is vital for the wellbeing of all New Zealanders. In a healthy information ecosystem people can find out what is happening in the world, constructively debate issues, and reach shared decisions about how to live together. They can engage with content which entertains, uplifts, educates and amuses, and have access to news and information that is truthful, fair and balanced. A healthy ecosystem enables people to participate in cultural life, express their identity, and be part of a functioning democratic society.

Public conversation on these issues has focused on barriers to a healthy information ecosystem. These include challenges to the business models which have traditionally supported public interest journalism, the spread of misinformation and disinformation which pose risks to health and democracy, and the impacts of online services and algorithms which amplify the speed and spread of superficial or emotive messages across society.

To get beyond these barriers, we need to put in place things<sup>2</sup> to support the healthy information ecosystem described above. Some of what a healthy information ecosystem needs are public goods that market actors and access to communication technologies alone will not adequately provide for.

### What is the government's role?

We think the role of government is to:

- **support** the creation and dissemination of and interaction with content that supports a healthy information ecosystem, and
- **protect** against harm to people, communities and society from the impact of harmful content and conduct both online and offline, and
- **provide an enabling environment** for diverse actors to innovate, coordinate, and participate in ways that deliver a healthy information ecosystem.

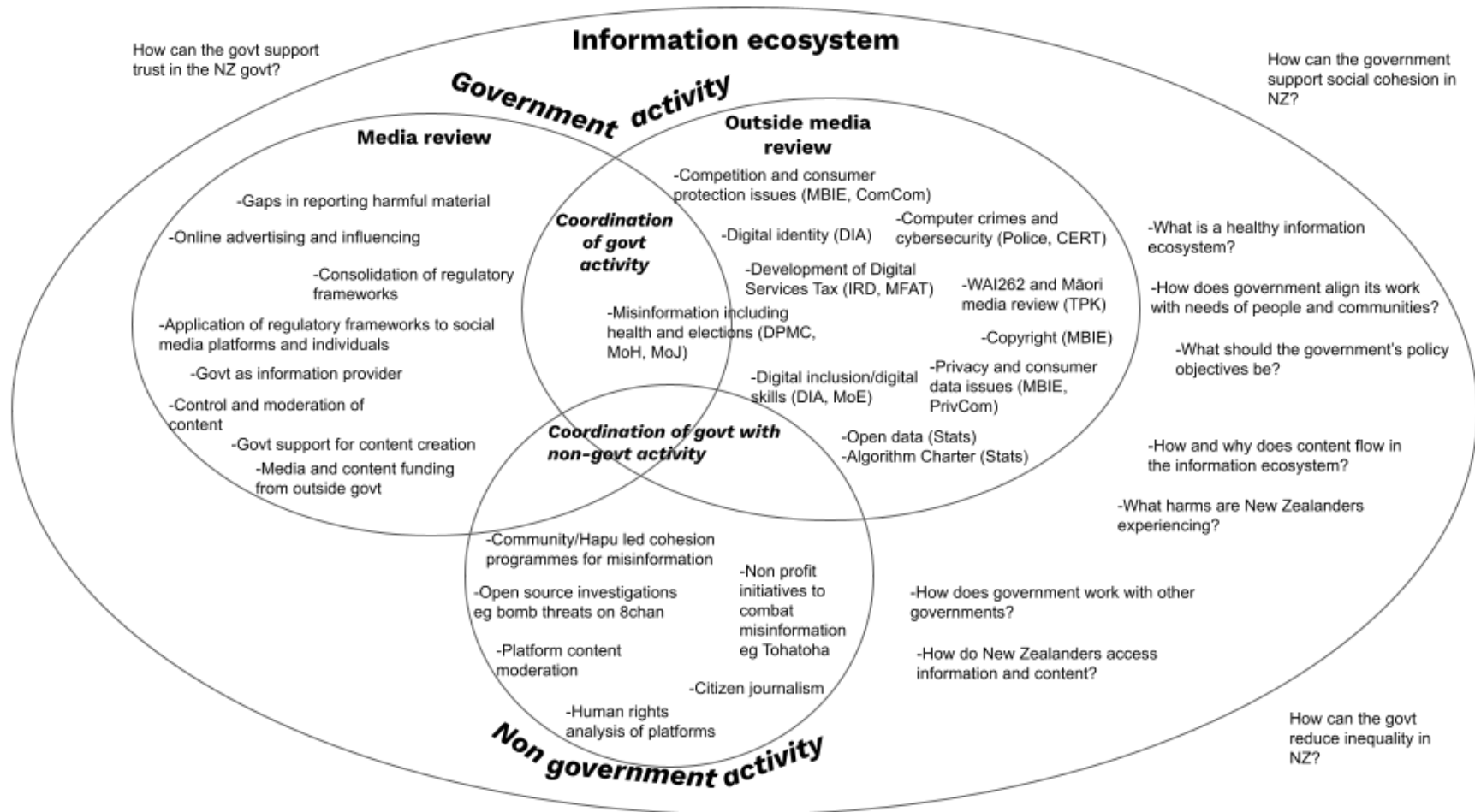
We welcome comment and discussion on this framing of a healthy information ecosystem and the government's role in achieving it.

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<sup>2</sup> This might include approaches, frameworks, regulations, guidelines etc

## Appendix 2: map of issues

This diagram illustrates how the media review could fit with broader work on the information ecosystem. The diagram is illustrative and not comprehensive. We welcome comment on this framing.



## **Appendix 3 - terms of reference**

We think the first stage of the media review (understanding the information ecosystem) should explore the following areas and questions. This terms of reference is offered to illustrate the potentially broad scope of this piece of work. We welcome comment.

### **Vision and objectives**

#### **What does a healthy information ecosystem look like?**

What does a healthy information ecosystem look like? What do New Zealanders want from a healthy information ecosystem?

What are the harms New Zealanders and their families and communities are experiencing or could experience in future from an unhealthy information ecosystem?

What are the principles and values that New Zealanders think should guide media policy in New Zealand?

#### **What problems need solving?**

What are the regulatory frameworks in New Zealand that currently fall within or relate to the information ecosystem? What are the objectives of those frameworks?

Are the objectives of these frameworks still relevant for the current context? What objectives should be added? What objectives are missing?

How can these objectives be achieved in the new information ecosystem context? What information or evidence is needed so that the government can understand how these objectives can be achieved?

### **Roles, coordination and engagement**

#### **How should government approach this work?**

What role should the New Zealand government take in supporting a healthy information ecosystem? What can be addressed through government intervention?

Which agencies and decision makers wield the government's responsibilities and powers to address issues in the information ecosystem?

Is the current allocation of responsibilities and powers among government agencies, regulators and decision makers appropriate in the modern context, and able to support the identified policy objectives? Is there a clear lead on the overarching strategy?

What other work is going on inside government that touches on or falls within the information ecosystem? What mechanisms should be put in place to enable the agencies leading these workstreams to ensure objectives and responses are aligned?

How can government ensure that solutions do not favour specific or incumbent actors, and encourage new players in both media and technology?

### **What is the role of non-government actors?**

Who are the key participants outside government in regulatory frameworks that currently relate to the information ecosystem? Who else is needed to support good outcomes?

How are actors outside government working to support a healthy information ecosystem? What can government do to foster and support these initiatives?

What should government do to coordinate work inside and outside government towards a healthy information ecosystem so that all actors are working towards agreed objectives?

### **Māori media issues**

How does this media review link in with the Māori media review that is being undertaken? Is the Māori media review covering the same trends and challenges in information and content?

How can we ensure that problem definitions and objectives for this review reflect a te ao Māori perspective? How should the principles of Te Tiriti o Waitangi be recognised and implemented in this space?

### **International context**

Which parts of the Government's work towards a healthy information ecosystem will need to align with the approach taken by other countries, to ensure efficacy? How will the Government ensure alignment in these cases?

What can we learn from Australia's approach to media regulation, specifically the ACCC report and pursuant Media Bargaining Code and Misinformation Code?

How will government responses to online content and conduct connect into international multistakeholder Internet governance structures?

### **Process**

What engagement framework(s) should government set up to ensure that all relevant agencies, non government groups/organisations/businesses, technical experts, and civil society can work together to answer the questions posed above, and to develop

multi stakeholder responses to the information ecosystem work programme that emerges?

## Understanding content

### **What is needed to create or supply content that is good for the ecosystem?**

How can government support and promote the creation of high quality New Zealand content, and content that meets the needs of diverse New Zealand audiences? How can government support the creation of reliable, accurate and quality news and information?

How can government create an enabling environment for local and public interest news and journalism?

Other than government, who should contribute to supporting the creation of New Zealand content and public interest journalism? How should those actors contribute?

How can accountability and transparency in the availability and discovery of digital cultural content be enabled, notably with access to local content?

### **What harms and risks of content need attention now and in the future?**

What are the current frameworks for the regulation or control of content and information in New Zealand? Where are the gaps and inconsistencies in these frameworks in the current converged environment?

Can these existing frameworks be consolidated to achieve the objectives identified above for the information ecosystem, or should a new framework be developed?

What is the role of (and the gaps between) institutions and bodies that regulate content, uphold standards and address harms? Who should set standards and regulate content in this converged environment?

Should entertainment content, news and current affairs, advertising content, opinion and speech be subject to the same standards, or should there continue to be different frameworks?

Who else is controlling or moderating content in the information ecosystem? How are platforms moderating content? How well are they doing it, and how do we know?

Who gets to decide what speech is genuine expression and what is dangerous or hate speech, what news is true and what is untrue, what content is legal and what is illegal?

In the current information ecosystem is a sole focus on content an efficient and effective way to protect New Zealanders from false, harmful or illegal content and

information? Or should a 21st century media regime also (or instead) focus on how content is accessed/distributed and amplified?

### **Who should content standards/regulations/frameworks apply to?**

Who should content standards/regulations/frameworks apply to? Who is “media”, who are “broadcasters” and “publishers” and who are “advertisers” in the current and future information ecosystem?

With consideration of the new definitions required above, which parts of content regulation apply to which actors and why? For example, do high profile individuals with large audiences on social media have to meet higher standards?

What responsibilities should online services have for the impacts of third parties using their services? How should these responsibilities be designed to protect the benefits of online participation and expression to New Zealanders?

## **Understanding conduct and behaviour**

### **Transparency and accountability on how content flows in the information ecosystem**

How do New Zealanders access information in the information ecosystem? How is content disseminated on the Internet? How is information amplified, how is information targeted at individuals?

What is the impact of automated decision making (i.e, use of algorithms and machine learning) on the discoverability of, access to and amplification or targeting of information and content? How is automated decision making used to shape people’s media environment?

Is information and content being micro targeted to individuals? How is information being micro targeted to individuals? Who is doing the micro targeting and for what purpose? Should there be restrictions on the kind of content that can be targeted at individuals or what information can be used to inform targeting? What information can be used to inform targeting?

How does the collection of data on individuals by companies or other actors impact on or relate to the distribution and amplification or targeting of information or content to those individuals?

Do certain business models incentivise choices and behaviour of companies that supports distribution/amplification/targeting of harmful content?

What information or evidence do platforms hold about how New Zealanders are accessing, receiving and interacting with content? How can government ensure appropriate access to this information, so as to support evidence-based policy making?



What people or capabilities does government need in order to understand and interpret this information and evidence? Can government partner with others to access this capability?

### **Access to, distribution, amplification and targeting of content**

How can government support the discoverability of, access to and amplification of high quality New Zealand content, content that meets the needs of diverse New Zealand audiences, truthful and legitimate news and information, and fair and appropriate commercial advertising?

How can government support actors in the information ecosystem to play a role in supporting the distribution, discoverability of and access to New Zealand content, or to truthful and legitimate news and information?

How can government disrupt the discoverability of, access to and amplification and targeting of false, harmful, or illegal content and information?

What is the role of traditional media (entities covered by the current media regime) and government in spreading misinformation? Are current standards and timeframes still fit for purpose?

How might government regulate to influence the choices of platforms in terms of business models and service design and other conduct where such actions and choices have the effect of amplifying and targeting false, harmful, or illegal content and information?

Can and should government consider competition, consumer data and privacy law as levers to lessen the ability of platforms to amplify and target false, harmful, or illegal content and information?

### **Interaction with content**

How does government build and maintain trust from New Zealanders, so that government bodies are seen as a trusted and legitimate information source?

How can government support media literacy, digital skills and critical thinking in the New Zealand population? How can these skills be built in different communities, and be provided to people who are not in formal education?