



interactive games & entertainment association

New Zealand Government, Department of Internal Affairs

Safer Online Services and Media Platforms Discussion Document

August 2023

IGEA acknowledges and pays respect to the past and present Traditional Custodians and Elders of this land and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples. We would like to extend our acknowledgments to the indigenous people from countries overseas & recognise their strength, wisdom and creativity.

IGEA acknowledges Māori as tangata whenua and Treaty of Waitangi partners in Aotearoa New Zealand.

Introduction & Overview

About IGEA

The Interactive Games & Entertainment Association (IGEA) is the peak industry association representing the business and public policy interests of New Zealand and Australian companies in the interactive games industry. Our members publish, market, develop and distribute interactive games and entertainment content and related hardware. We proudly represent a number of homegrown and independent New Zealand businesses that provide a range of games that New Zealanders love and help to support retailers and storefronts across the country.

IGEA welcomes the opportunity to provide a submission to Te Tari Taiwhenua, The Department of International Affairs, Public Consultation: Safer Online Services and Media Platforms. The proposed changes include the creation of a new regulator that will approve and enforce industry codes to improve the safety of users in online spaces. If there are any queries or questions about this submission or require further information, please contact our policy team via policy@igea.net.

The importance of video games and the video games industry in New Zealand

Video games are a beloved New Zealand activity and greatly benefit New Zealand game players, the wider community, and the economy. Video game developers and publishers are the innovators, creators and business leaders who are reimagining entertainment and transforming how we learn and play. Almost 8 in 10 New Zealanders play games,¹ playing mainly for enjoyment and relaxation, and games are increasingly being used for serious and educational purposes, including by governments. Video games provide a digital outlet for New Zealand art, culture, stories and voices, and New Zealand-made video games are among New Zealand's most successful and valuable cultural exports. Our medium also brings kids into STEM and helps to build technology skills that will feed New Zealand's workforce needs.

The video game industry is a major contributor to the New Zealand digital economy. According to our data, video games are worth around \$608 million in New Zealand,² while New Zealand-made games brought in \$400 million in largely export revenue last year.³ Moreover, because the video game sector uniquely sits at the intersection of entertainment, the arts and technology, video game companies hire a wide range of artistic, technical and professional roles. They are thus a wellspring of high-quality, sustainable careers and are an engine for growth in the New Zealand national economy. Indeed, the New Zealand video games industry is internationally renowned and has the potential to be one of New Zealand's most important growth industries of the future, as well as an integral component of the Government's vision for New Zealand's future digital economy,⁴ built on Mahi Tika - Trust, Mahi Tahi - Inclusion and Mahi Ake - Growth.⁵

¹ <https://igea.net/2023/09/new-zealand-plays-2023/>

² [New Zealand Video Game Consumer Sales Show Strength In Numbers - IGEA](#)

³ [NZ Interactive Media Industry Survey 2022](#)

⁴ [Tech investment lays foundations for future economy | Beehive.govt.nz](#)

⁵ [New Strategy marks next step in NZ's digital journey | Beehive.govt.nz](#)

Safer Online Services and Media Platforms

Overarching Views

The video game industry is committed to its obligation to ensure safe and fun gameplay. The industry drives this commitment through a world-leading multi-level approach involving strong compliance with classification schemes, embedding safety features into consoles and games and empowering players to engage in positive game behaviour. As such, we support the proposed reform's objectives and ideas to encourage safer online environments. While supporting the principles of the proposed reform, particularly in relation to the proposed deregulation of the classification framework, the industry has some reservations about some of the outlined policy approaches.

Overall, we understand and support the need to streamline and modernise New Zealand's regulatory framework concerning digital content. The proposed reforms will impact the video games industry by two key changes: (1) implementation of industry codes and (2) ceasing of legally enforceable classifications. Whilst the industry is committed to the safety of its players, there are concerns that the industry codes process may be impractical and unnecessarily complex. On the other hand, the proposed classification reforms are generally welcome, and we encourage the government to engage with industry in shaping these changes.

We thank the Department of Internal Affairs for their continuous and thorough consultation with industry on this discussion paper, which has been informed by conversations with us and other stakeholders over the past year. Our submission addresses overarching sections of the Questions for Feedback, focussing on specific questions relevant to our industry. At this stage, our responses are relatively high-level, recognising that this discussion paper is just the start of the dialogue on a future regulatory framework for online content. We expect there will be further work and consultation to formulate more definitive regulatory approaches, and we look forward to being a part of that journey.

Proposed new Framework: Questions 5, 6 and 9

5. Do you agree with how we have defined 'platforms'? Do you think our definition is too narrow, or too broad? If so, why?

In the discussion document, 'platforms' are referred to as 'providers of content and services - for example, social media companies or broadcasters'.⁶ The proposed definition of 'platforms' is so broad that it could arguably apply to any online service or platform within all layers of the internet, including those outside the intended scope. While this broad definition will likely cover video games and video game platforms generally, it is unclear whether responsibility falls on developers, publishers or distributors of video games. Further, whilst we appreciate using a catch-all definition to ensure technology neutrality, we are concerned that 'platforms' may not fully represent the different characteristics of online spaces, particularly if they are all treated the same, regardless of their different risk profiles. For example, communication on social media platforms is generally public, media-rich and unfiltered. In contrast, in-game communication is almost always less risky because they are typically private, ephemeral, text-only and automatically filtered (eg. for abusive language). We are concerned that this broad definition lacks clarity and may lead to industry

⁶ [Safer Online Services and Media Platforms - Discussion Document](#) Page 4

uncertainty and that any future regulatory framework may treat all 'platforms' the same. While "technology neutrality" can mean many things, it must never mean equal regulation across all technologies.

Recommendation: Implement a narrower and more nuanced definition of 'platforms', possibly considering the different types or mediums of content and services being provided.

6. We are trying to focus on platforms with the greatest reach and potential to cause harm. Have we got the criteria for 'Regulated Platforms' right?

The discussion paper proposes a broad definition of 'regulated platforms', which are platforms where their primary purpose is to make content available. The paper proposes that platforms or services will be regulated if they have either an expected audience of 100,000 or more annually or 25,000 account holders annually in New Zealand.

Firstly, we note that even using 'audience' and 'account holders' within the definition raises questions and uncertainty. In a video games context, the 'audience' would generally mean players, but 'account holder' may mean the account holder of a particular game or the account holder of the underlying gaming platform (e.g., the gaming console). Additionally, there is often a large difference between total account holders and active account holders, as many account holders may no longer be active and thus not counted for the purposes of these thresholds. Otherwise, any regulated platform may eventually reach the account holder threshold. We also question the significant gap between the thresholds for 'audience' and 'account holder', which will discriminate against the increasing number of video game companies that require all players to have accounts (for reasons including security and online safety features), despite those platforms generally having a far lower risk profile than many digital platforms that do not require accounts but represent significantly higher risk.

We are also concerned with the proposed thresholds themselves. As advised by the Department, the purpose of the proposed thresholds for the definition of 'regulated platforms' is to reflect the population size of New Zealand. We are concerned, however, that due to the broad proposed definition of 'platforms' and the low threshold of 'regulated platforms', an unreasonably large number of video games will be captured by the scope of regulation and that many individual games created by small games studios will be caught under the definition. The purpose of the reforms appears to be to target higher risk platforms. Still, such a broad definition of 'regulated platforms' may unnecessarily impose regulation on smaller, lower-risk content providers.

Contrarily, the European *Digital Services Act* focuses on very large online platforms, defined as those reaching more than 10 per cent of Europe's population (or more than 45 million users). We note that in Australia, the eSafety Commissioner has accepted and registered the Social Media Services industry code, which has a similar threshold (for Tier 1 services) of over 3 million active Australian end-users (approximately 11 per cent of the population).⁷ If a similar threshold mechanism was adopted for the proposed reforms, 10 per cent of New Zealand's population of approximately 5 million people would be 500,000, or five times the

⁷ [230616_1_SMS-Schedule_REGISTERED-160623.pdf \(onlinesafety.org.au\)](#) Page 6

Department's proposed threshold of an expected audience of 100,000. A 10 per cent threshold will ensure that larger platforms are caught under the reforms (for example, in early 2023, Pinterest had an estimated 676,000 users)⁸. We believe a similar approach under the new reforms would ensure that smaller platforms (such as individuals who may have created a small mobile game) are not inadvertently caught under the new regulatory scheme.

Recommendation: Define 'regulated platforms' to be platforms with an expected audience threshold of 10 per cent of New Zealand's population, as implemented in Europe.⁹

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

We believe the reforms should be responsive to the differences between video games and other digital spaces regarding functionality and risk profile. For instance, while video games may include communication functionalities, they are generally much more limited than the open communications prevalent in other digital platforms, such as social media services. Moreover, video games also incorporate a range of measures to ensure safe interactions with players that are not always found in the wider digital ecosystem. For example, to enhance play protection Microsoft has recently introduced the Xbox Enforcement Strike System, where players can receive a total of eight strikes (as a result of inappropriate behaviour), with each strike resulting in a suspension from Xbox's social features for varying lengths of time.¹⁰

Further, in-game communication is an ancillary function to gameplay itself, limited to a small group of other players (contrary to public feeds with algorithm-collated content and advertising), are typically limited to text and are ephemeral (disappears after the gameplay session ends) and cannot thus amplify or promote harmful themes. Further, filtering and blocking inappropriate communications is an established practice in our sector, keeping players safe and more heavy-handed approaches to filter or block inappropriate communications are often the norm. The limited functionality of communication in games means that risks in community behaviour are easier to address, safety can remain uncompromised and enforcing community harms like language and abuse can be efficient and effective.

Video games have an entrenched and dedicated approach to online safety, differentiating them from other online services and media platforms. The video games industry has a rich history of prioritising player trust and safety, making video game platforms a unique digital environment from both a user and regulatory perspective. Some examples of safety features in video games include:

- Strong and enforced Codes of Conduct and Terms of Service.

⁸ [Digital 2023: New Zealand – DataReportal - Global Digital Insights](#)

⁹ [Digital Services Act: Commission starts collecting platform's user numbers and consults on its monitoring and investigatory procedures | Shaping Europe's digital future \(europa.eu\)](#)

¹⁰ <https://news.xbox.com/en-us/2023/08/15/xbox-enforcement-strike-system/>

- Pre-emptive profanity and harassment filters in in-game communication (i.e., text chats).
- Options for players to mute or report other players.
- Enforcement and penalties of players, including suspensions or bans.

Considering video game's unique communication and safety mechanisms, we are concerned that regulatory schemes designed for social media and communication services may not be well-suited to online gaming environments. Regulations must be nuanced enough not to impose one-size-fits-all requirements and expectations. Given video game's committed approach to player safety, video game platforms are comparatively less risky and will require considered regulatory approaches that reflect this.

Recommendation: Consider layers of regulation that recognise and accommodate the already highly limited and restricted nature of communications in online video games, and with consideration of their already extensive use of online safety features.

Regulator Powers: Questions 13, 14, 17 to 20

The discussion paper outlines the following powers of the regulator:

- Power to check information from platforms to make sure they follow codes and can issue penalties for serious failures of compliance.
- Powers to require illegal material (including harassment or threats to kill) to be removed quickly from public availability in New Zealand (takedown powers).
- Regulator would have no powers to moderate or require the takedown of legal content.
- Powers to enforce compliance, including seeking civil penalties for significant regulatory non-compliance, issuing formal warnings and recommending criminal prosecution to the relevant government department.

These powers are similar to those given to the eSafety Commissioner in Australia, who is able to make formal removal requests to take down illegal content, with which companies must comply within 24 hours. In considering whether powers of such magnitude are appropriate for New Zealand, we note that these significant powers are rarely used in Australia. For example, the eSafety Commissioner, while receiving 1,542 complaints about child cyberbullying between June 2021-22, issued no formal removal notices; instead, 217 informal removal requests were made.¹¹ Further, during 2021-22, while the eSafety Commissioner finalised investigations into illegal and restricted content for 11,105 URLs, only 17 formal removal notices were issued under the Online Content Scheme.¹² The eSafety Commission's annual report outlines that eSafety often prefers to use informal requests to remove illegal and restricted content and will consider regulatory responses if there is no response.¹³

¹¹ [Australian Communications and Media Authority; Office of the Children's eSafety Commissioner Annual Reports 2015-16](#) Page 176

¹² [Australian Communications and Media Authority; Office of the Children's eSafety Commissioner Annual Reports 2015-16](#) Page 186-187

¹³ [Australian Communications and Media Authority; Office of the Children's eSafety Commissioner Annual Reports 2015-16](#) Page 186

While the video games industry is committed to the safety of its players, we are concerned that giving the regulator unnecessarily broad powers disproportionate to the harm they seek to address may make compliance difficult or impossible to achieve. The video games industry also differs from social media platforms in that there are few larger companies but is instead made up of hundreds of smaller studios, which may be affected by the proposed reforms. For example, to comply with takedown notices, smaller game studios, most of which would make very low risk games, may have to implement new systems and capabilities at significant cost. These may not be realistic for businesses in their early growth stage and may well be inconsistent with a broader reform agenda of streamlining compliance.

We also note that the combination of powers to issue takedowns and a civil penalty regime already provides a significant regulatory framework. As such, we question whether the regulator requires any powers outside of civil penalties. We note the possibly conflicting messaging of whether the regulator will have power to initiate and pursue both civil and criminal prosecutions. The discussion paper mentions that the regulator would not have the powers to undertake prosecution for any criminal non-compliance directly. However, there are also suggestions that the regulator can initiate criminal prosecution. Nonetheless, since the definition of illegal content and therefore any criminal offences relating to such content will remain unchanged, we argue that the regulator does not require any criminal prosecution powers. We also note that online content providers are overwhelmingly located overseas, making criminal prosecution difficult and likely ineffective.

Recommendation: The regulator should have well defined powers, and any takedown powers should be treated as reserve powers that are not used unless under strict, urgent or last resort circumstances. Any formal use of takedown powers should be well defined and clearly articulated under legislation. Takedown powers should only be able to be exercised against platforms that meet certain size and risk profiles.

Classifications: Questions 11 and 26

Considering the variety and complexities of video game platforms, the industry welcomes supportive approaches to regulation (focus on collaboration and partnership). Such approaches ensure flexibility in an ever evolving and expanding video games market. We particularly welcome the use of supportive approaches in the form of ceasing legally enforceable classifications. The existing classification framework is unnecessarily strict towards the classification of physical video games compared to both online and broadcast television content. We look forward to consulting with the department on transitioning away from legally enforceable classifications, whilst ensuring that consumers and carers remain confident in making informed choices.

Whilst moving towards a new classification system is welcome, to ensure the empowerment of consumers and players, the industry does call for some certainty of expectations and guidance in relation to classifiable content. This is to ensure consistent industry standards are maintained, consumers are well informed and to ensure that game publishers and distributors, assuming that they are required to provide certain consumer information on physical products, can do so with certainty that they will not need to be changed.

Considering the regulatory and market landscape of the New Zealand video games industry, we believe there are several possible routes to explore to ensure certainty for the industry:

- Utilise existing New Zealand rating levels, text, icons and descriptors where feasible.
- Extending full recognition and/or cross rating with the Australian classification system.
- Use of the International Age Rating Coalition (IARC) tool to classify games according to familiar New Zealand ratings.
- Providing individual publishers or platforms with the option to implement their own age rating system that meets certain requirements.

To conclude, we would also like to highlight that the Classification Office has been successfully implementing a co-regulatory classification framework for commercial subscription video-on-demand platforms. Future reform also necessitates the disbanding of the Film and Video Labelling Body (FVLB) of New Zealand, an anachronistic part of the exiting classification framework that we believe no longer has a role under a modern (and largely digital) media and content ecosystem.

Recommendation: We support the ceasing of legally enforceable classification. We support working with the Government to implement a new modernised classification system that is co-designed with industry.

Industry Codes of Practice: Questions 4, 7, 8, 10 and 12

We believe moving away from prescriptive approaches to safety, and instead relying on industry-led mechanisms best places digital platforms to enact safety standards with flexibility and confidence. For the video game industry specifically, with its long history of player protection, we believe self-regulation is an appropriate framework, and any efforts to impose more significant measures on the industry should be justified with evidence of specific failures of the effectiveness of self-regulation. If done correctly, the video games industry generally supports using industry-based codes over legislative frameworks to regulate online safety so that codes can be created by and tailored for the industry. However, some challenges have been faced in writing codes, as seen in the Australian experience of creating Online Industry Safety Codes under its *Online Safety Act 2021*.

Firstly, it was challenging to create codes tailored and applicable to video games under the determined code categories, some of which were concepts created for the first time under the Act:

- Social Medias Services
- Apps Distribution Services
- Hosting Services
- Internet Carriage Services
- Manufacturers and Suppliers of Equipment
- Relevant Electronic Services (which include SMS and MMS, emails, video communications, online gaming services, etc.)
- Designated Internet Services (which includes most websites, amongst many other services).

The writing process for industry codes was more challenging than needed, as the video game platforms were unsuitably placed alongside many unrelated services under the 'catch-all' category of Relevant Electronic Services (RES). When registering the codes for approval by the eSafety Commissioner, the proposed RES code was rejected which meant that even though the Commissioner had no significant concerns with the parts of the code relevant to video games, those parts were ultimately rejected simply because they were part of a larger code that was deemed unacceptable. The successful work expended by our industry over 18 months to ensure that our parts of the RES code were suitable for registration was ultimately fruitless.

The Australian *Online Safety Act 2021* also gives the eSafety Commissioner the power to approve (or not approve) a code without providing any guidance around determining whether a given code is suitable for approval, creating inevitable conflict between the industry and the regulator. Finally, we are concerned about the potentially heavy burden placed on industry associations that may not be equipped to carry out such a significant task. To our knowledge, only two associations, Tech NZ and IGEA, actively represent the digital sector in the country, leaving many other parts of the sector underrepresented.

Recommendation: That if an industry codes approach is taken, that the Government engage in dialogue with industry stakeholders to discuss how a framework could be designed that is both practical for industry while achieving common policy objectives.

Potential roles and responsibilities under the proposed framework: Question 3, 21 and 22

We believe that the roles and responsibilities spread across government, the regulator, platforms, and NGOs are generally reasonable. We are concerned however with specific roles and responsibilities across some key players.

Role of Platforms

As mentioned above, given the wide ambit proposed under the definition of 'regulated platform', we are concerned that smaller platforms, in particular, will be unnecessarily burdened by the new regulatory scheme. For instance, the discussion paper provides an example that platforms must engage in 'quarterly transparency reporting'.¹⁴ This reporting frequency can be a significant burden for platforms of any size, particularly in New Zealand, where the local offices of digital platforms, if any, are typically small. We note that the European *Digital Services Act* requires annual transparency reporting on content moderation,¹⁵ which may still be overburdensome for smaller regulated platforms. Further, under the *Online Safety Act 2021*,¹⁶ the Australian eSafety Commissioner can request transparency reporting on a periodic or non-period basis¹⁷ rather than enforcing automatic or rolling transparency reporting. We believe these mechanisms would be more suited to regulated platforms' varying sizes and risk profiles.

¹⁴ Discussion Paper, Page 38.

¹⁵ Article 15.

¹⁶ Section 56.

¹⁷ Section 49 and 56.

Role of Sector/Industry Bodies

The discussion paper outlines that industry bodies will be responsible for maintaining and developing codes, handling code complaints and being involved in platforms complaint appeals on behalf of members. While we support the aim of industry bodies driving the preparation of industry codes, should this approach be taken, we are concerned about the distribution of workload placed onto industry bodies, particularly considering the low number of bodies representing the digital industry in New Zealand. Further, we are concerned with the capacity of industry associations to handle any complaints or compliance processes. For example, IGEA comprises eight staff members, currently based in Australia, and only two have policy and regulatory expertise. Many industry associations are made up of even smaller teams and may not have the expertise or capacity to deal with regulatory or compliance activities.

Recommendations:

Implement a nuanced approach to defining platform roles and responsibilities, rather than a one-size-fits-all model, accounting for the risk profiles and sizes of different kinds of the platform.

If transparency reporting is to be incorporated in the reforms, reporting should be required annual at most, and it should be only required upon request rather than a mandatory requirement for all regulated platforms.

Reconsider the roles and responsibilities of industry associations, particularly considering the small number of (and undersized nature of) associations representing digital industries in New Zealand. We invite the Department to consult with us about how to create an efficient system that is not unnecessarily burdensome to industry associations, whilst meeting the policy objectives of the reform.

What would the proposed model achieve?

We would like to briefly comment on questions in relation to providing for Te Tiriti o Waitangi and addressing harms experienced by Māori through these reforms. The industry aims to continuously and fully respect and uplift the culture and values of the Māori. We look forward to continuing to develop best practice processes within the video games industry that include and ensure the safety and respect of the Māori people and culture.

Recommendation: Should industry codes be used, we support a key role for Māori groups to help inform industry in always ensuring cultural safety and respect.