



22 February 2022

Ref: OIA-2021/22-0532

Dear [REDACTED]

Official Information Act request for eight specific national security documents

Thank you for your request made under the Official Information Act 1982 (the Act), received on 2 November 2021. You requested:

- “ONE: The December 2018 memo titled “Our parting thoughts and wishes for the National Security System” [1819NSPD/064]*
- TWO: The December 2018 briefing titled “Prevention of Violent Extremism - Update” [1819NSPD/065]*
- THREE: The March 2019 briefing titled “Proposed Counter-terrorism Cabinet papers” [1819NSPD/094]*
- FOUR: The March 2019 memo titled “Social Media and Harmful Online Content” [1819NSPD/107]*
- FIVE: The September 2019 Cabinet paper titled “National Terrorism Threat Level and Response System” [ERS-19-SUB-0020]*
- SIX: The November 2019 Cabinet paper titled “Progress Against the National Security and Intelligence Priorities” [ERS-19-SUB-0038]*
- SEVEN: The December 2019 briefing titled “Cabinet Social Wellbeing Committee Meeting 4 December 2019 - Managing National Security Information in Proceedings” [1920NSP/038]*
- EIGHT: The October 2020 briefing titled “QAnon - Designation and Dis-information” [2021NSP/014]”.*

I last wrote to you on 1 February 2022 advising that I had decided to withhold two documents in full and that consultations were being completed before I released the remainder of the documents to you. I apologise for the delay in providing you with the requested information. I am now in a position to respond to the remainder of your request.

I note that we wrote to you on 15 November 2021, advising you that your request for Documents Five and Six (2019 papers submitted to the Cabinet External Relations and Security Committee) had been transferred to the Minister for National Security and Intelligence (Rt Hon Jacinda Ardern).

As noted above, on 1 February 2022 I wrote to you advising that the following documents were withheld in full:

Document One “*Our parting thoughts and wishes for the National Security System*” (December 2018) [1819NSPD/064] was withheld under the following sections of the Act:

- section 6(a), to protect the security or defence of New Zealand or the international relations of New Zealand.
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion

Document Eight: “*QAnon - Designation and Dis-information*” (October 2020) [2021NSP/014] provided preliminary advice and was withheld under the following sections of the Act:

- section 9(2)(c), to protect the health or safety of members of the public; and
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion.

Information to be released

Please find **attached** the following documents listed below, subject to information being withheld as noted:

Document Two: “*Prevention of Violent Extremism - Update*” (December 2018) [1819NSPD/065].

Document Three: “*Proposed Counter-terrorism Cabinet papers*” (March 2019) [1819NSPD/094]. As noted in my previous response, this briefing reflected the position at a particular point in time. The briefing was submitted on the morning of 15 March 2019 and would not have been read by the Prime Minister and Minister for National Security and Intelligence, Rt Hon Jacinda Ardern, until some time later. Given the passage of time and events, including the terrorist attack on the Christchurch mosques that have happened since this briefing was written, it does not necessarily reflect the current position.

Document Four: “*Social Media and Harmful Online Content*” (March 2019) [1819NSPD/107]

Document Seven: “*Cabinet Social Wellbeing Committee Meeting 4 December 2019 - Managing National Security Information in Proceedings*” (December 2019) [1920NSP/038].

The relevant sections of the Act under which some information contained in these briefings has been withheld are:

- section 6(a), to protect the security or defence of New Zealand or the international relations of New Zealand;
- some names and contact details have been withheld under section 9(2)(a), to protect the privacy of individuals;
- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials; and
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion.

Where information has been withheld under section 9 of the Act, no public interest in releasing the withheld information has been identified that would be sufficient to override the reasons for withholding it.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on the Department of the Prime Minister and Cabinet's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



Tony Lynch
Deputy Chief Executive
National Security Group

Enc: information for release, consisting of four DPMC briefings.



Briefing

PREVENTION OF VIOLENT EXTREMISM - UPDATE

To: Prime Minister, Minister for National Security and Intelligence (Rt Hon Jacinda Ardern)
CC: Minister Responsible for the NZSIS and GCSB, Minister of Justice (Hon Andrew Little)
Minister of Police (Hon Stuart Nash)

Date	18/12/2018	Priority	Routine
Deadline	25/01/2019	Briefing Number	1819NSPD/065

Purpose

1. This paper provides you with an update on work undertaken by officials in relation to the prevention of violent extremism in New Zealand.

Recommendations

The Department of the Prime Minister and Cabinet recommends that you:

1. **Note** that officials have undertaken a stocktake of our approach to the prevention of violent extremism - both at the strategic / community level and in relation to specific individuals of concern.
2. **Note** that this work on the prevention of violent extremism sits alongside advice being prepared for Ministers on counter terrorism legislation and is also relevant to policy work underway related to foreign terrorist fighters.
3. **Note** the attached High Level Framework for the Prevention of Violent Extremism (Attachment A).



4. **Note** the intention to establish a new cross-agency programme to support more coordinated, holistic case management of individuals of violent extremism concern.

<p>Howard Broad Deputy Chief Executive National Security Group DPMC</p>	<p>Rt Hon Jacinda Ardern Prime Minister Minister for National Security and Intelligence</p>
<p>...../...../2018</p>	<p>...../...../2018</p>

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Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Howard Broad	Deputy Chief Executive National Security Group	DDI s9(2)(a)	Mobile s9(2)(a)	✓
s9(2)(a)	Specialist Coordinator National Security Group	DDI s9(2)(a)	Mobile s9(2)(a)	

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

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Prevention of Violent Extremism

Prevention of Violent Extremism - Stocktake

2. Over the past few months, officials have undertaken a stocktake of New Zealand's approach to the prevention of violent extremism – that is, the approach taken to preventing the emergence, and managing the presence, of violent extremist ideas, ideologies and activities.
3. The stocktake was not driven by a specific or immediate concern. Rather, it reflected the strategic importance of this aspect of our counter terrorism effort and a desire to test the current approach. While consideration was given to approaches adopted in some other countries, it was recognised that our approach needed to reflect the strengths of our current approach as well as the particular nature, scale and profile of the violent extremism problem in New Zealand. The number of known individuals of violent extremist concern to New Zealand agencies continues to be relatively small.
4. The stocktake involved a wide range of national security and social agencies, recognising much of the effort relevant to the reduction of violent extremism risk is linked to wider efforts to build an inclusive society, support communities and deliver social services.
5. This stocktake is part of a wider counter terrorism work programme, and it has particular relevance to other work-streams concerned with counter terrorism legislation and the management of potential foreign terrorist fighters (see paragraphs 16-19 below).

High Level Framework and Strategic Approach

6. The outcome of the stocktake is captured in the High Level Framework for the Prevention of Violent Extremism (**Attachment A**), which can be summarised at two levels:
 - At the strategic / community level – continued cross-government investment in proactive, broad-based community engagement and relationships, and the promotion of social inclusion and diversity.
 - At the tactical level, focused on specific individuals – a bespoke approach to case management involving a wide range of security and social service oriented agencies and community organisations.

s9(2)(g)(i)

9. Instead, the preferred approach is to continue building strong relationships with communities through broad-based engagement across a range of issues - ideally led by agencies with a long-term community role and presence. These relationships can then be accessed to



address specific violent extremist problems in a targeted way, if and where they arise. In this regard, the attached High Level Framework is consistent with our current underlying approach to violent extremism.

Enhanced Inter-agency Coordination

10. There was, however, one specific recommendation arising out of the stocktake - establishment of a new Multi-Agency Coordination and Intervention Programme (MACIP) for the case management of individuals of violent extremism concern.
11. Inter-agency collaboration is a core feature of the current approach to dealing with individuals of violent extremist concern. There are strong working relationships between key agencies, including New Zealand Police, Corrections and the Ministry for Social Development. However, the new programme will add an additional layer of coordination around current case-by-case engagement between agencies. It will build on an existing violent extremism coordination programme focused on young people (under 18s), the Young Persons Intervention Programme (YPIP) – established in 2015.
12. In some cases, the primary focus of agencies will need to be risk management rather than rehabilitation (at least in the short term). However, in most cases, there will be an opportunity to consider interventions that will support disengagement, rehabilitation and the best long-term outcomes for the individual, family or community. This requires a holistic and multi-agency approach.
13. The proposed programme was recently endorsed by the Security and Intelligence Board of Chief Executives, with support from social agencies (including the Ministry for Social Development, Ministry of Health, Ministry of Education and Oranga Tamariki) and the Department of Internal Affairs.
14. Guiding parameters for the new programme include:
 - New Zealand Police in a lead coordination role;
 - Multi-agency membership, including social sector agencies;
 - A focus on violent extremism risk reduction and mitigation, but:
 - recognising relationships between extremism and other complex problems;
 - grounded in a bespoke, outcomes approach taking advantage the tools, services, capabilities and external relationships held across government; and
 - A scope that includes individuals of violent extremist concern of different ages and profiles, including those within the community or corrections system and those that could return from off-shore.
15. Agencies are currently working through the management, governance and resourcing arrangements for the MACIP. An update will be provided to all relevant Ministers once these are confirmed. The programme is expected to be operating from the second quarter of 2019.

Other Counter Terrorism Work-streams

16. Counter Terrorism Legislation - Officials are currently developing advice and options on potential changes to aspects of counter terrorism legislation for Ministers' consideration. The scope of issues being considered includes new terrorism-related offences and new control orders to help with the management of violent extremists in the community.
17. The MACIP will play a role complementary to law enforcement and the justice system, and in doing so should enhance the range of tools and interventions available to agencies in addressing violent extremism.
18. Foreign Terrorist Fighter Policy Framework - Officials are presently preparing advice on a policy framework for the management of potential foreign terrorist fighters. Amongst scenarios being considered is the possibility of New Zealand needing to manage an individual that has returned to New Zealand from the conflict zone.
19. This scenario would present a significant, long-term risk management and rehabilitation challenge, whether the individual was prosecuted and managed through the corrections system or returned to the community. The MACIP would provide a mechanism for coordinating inter-agency activity over the medium to long term.
20. Terrorism Risk Management and Threat Assessment – The Security and Intelligence Board also recently endorsed a number of proposed changes to our counter terrorism risk management system, including significant changes to the way the national terrorism threat level assessment is undertaken. We intend to brief you on these proposals early next year with a view to taking a paper to the External Relations and Security Committee (ERS) – covering the proposed changes to the terrorism threat assessment system as well as providing a wider update on the counter terrorism work programme.

Attachments

Attachments:	
Appendix A:	High Level Framework for the Prevention of Violent Extremism



Briefing

PROPOSED COUNTER-TERRORISM CABINET PAPERS

To: Prime Minister, Minister for National Security and Intelligence (Rt Hon Jacinda Ardern)
CC: Minister Responsible for the NZSIS and GCSB, Minister of Justice (Hon Andrew Little)

Date	15/03/2019	Priority	Routine
Deadline	26/03/2019	Briefing Number	1819NSPD/094

Purpose

1. This briefing note outlines two proposed Cabinet papers relating to counter-terrorism. These two Cabinet papers are attached in draft form.
2. The first draft Cabinet paper provides an overview of the wider counter-terrorism strategic work programme, to be submitted by you as the Minister for National Security and Intelligence. You will note this paper includes discussion of the work on counter-terrorism legislation. ^{s6(a)}
[REDACTED]
3. The second draft Cabinet paper sets out changes to the national terrorism threat assessment, to be jointly submitted by yourself as the Minister for National Security and Intelligence and the Minister Responsible for the NZSIS.
4. It is proposed these two papers are submitted to the External Relations and Security Committee of Cabinet (ERS) for its meeting on 30 April.
5. The draft papers have been consulted with a small group of key agencies. It would be helpful to get your views on them by 26 March (including, if you wish, a discussion at your National Security Briefing on 20 March). This will enable good time for the necessary Ministerial-level consultation ahead of the 30 April meeting of ERS.

Recommendations

We recommend that you:

1. **Note** the attached draft Cabinet papers:

- 1.1. Counter-Terrorism Strategic Work Programme
- 1.2. Proposed Changes to the National Terrorism Threat Assessment
- 2. **Note** that it is proposed these papers are submitted to the meeting of the External Relations and Security Committee of Cabinet scheduled for 30 April
- 3. **Note** that the papers have been consulted at officials level, but wider (ministerial-level) consultation has yet to occur
- 4. **Note** that officials would welcome any views you have on these papers by 26 March (including, if you wish, a discussion at your National Security Briefing on 20 March)
- 5. **Note** that, amongst other issues, your views on the potential acceleration and/or broadening of the current work on counter-terrorism legislation would be welcome
- 6. **Agree** to forward this briefing note and the attached draft Cabinet papers to the Minister Responsible for the NZSIS.

Cecile Hillyer
**Acting Deputy Chief Executive
National Security Group
DPMC**

...../...../2019

Rt Hon Jacinda Ardern
**Prime Minister
Minister for National Security and
Intelligence**

...../...../2019

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Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Cecile Hillyer	Acting Deputy Chief Executive National Security Group	DDI s9(2)(a)	Mobile s9(2)(a)	✓
s9(2)(a)	Specialist Coordinator National Security Group	DDI s9(2)(a)	Mobile s9(2)(a)	

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to


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PROPOSED COUNTER-TERRORISM CABINET PAPERS

Paper 1 - National Terrorism Threat Assessment

1. This paper sets out a number of proposed changes to the national terrorism threat assessment, specifically:
 - Introduction of a regular, annual National Terrorism Threat Assessment (and associated threat level) – linked to an annual, strategic terrorism risk management cycle.
 - Publication of an annual statement concerning the terrorism threat environment – based on the annual terrorism threat assessment.
 - Development of a new analytical framework and criteria for the National Terrorism Threat Assessment (and associated threat level).
 - Elevation of decision-making responsibility for the National Terrorism Threat Level to the Director-General NZSIS.
2. Collectively, these proposed changes are intended to address three main issues:

2.1 s6(a)



2.2 Second, the national terrorism threat level was not designed as a public communications tool. However, once disclosed in 2014 (by former Prime Minister Key), there has been some expectation of disclosure of the national terrorism threat level and any change in that level. It has become a point of regular media inquiry.

2.3 s6(a)



3. We propose this paper is submitted jointly by yourself, as Minister for National Security and Intelligence, along with the Minister Responsible for the NZSIS.

Paper 2 - Counter-Terrorism Strategic Work Programme

4. There are a number of counter-terrorism work-streams underway across government. These include advice on foreign terrorist fighters, a review of counter-terrorism legislation, a stocktake of our approach to countering violent extremism, and proposed changes to the national terrorism threat assessment.
5. The purpose of the proposed Cabinet paper is to draw these work-streams together to ensure greater ministerial visibility and to position them within a wider counter-terrorism strategic work programme. This paper is for the wider visibility and information of your colleagues; any ministerial or Cabinet decisions on these work-streams will be sought separately. The paper also provides an overview of the evolving terrorism threat environment as important context for the work programme. The discussion of individual work-streams is largely confined to the short descriptions provided in Appendix A. The two exceptions are the work-stream concerned with the prevention of violent extremism and the work-stream concerned with counter-terrorism legislation.
6. Strategically, these are two important work-streams. Collectively, they address a broad range of the interventions available to government agencies in countering violent extremism, ranging from earlier interventions intended to prevent the emergence or growth of violent extremist behaviour to interventions necessary to protect the public from an immediate threat. They are also relevant to current discussions about arrangements for managing individuals that return from Iraq / Syria having travelled to fight with / support ISIS.
7. You will recall that officials are developing advice on possible changes to counter-terrorism legislation. The scope of that work - as agreed previously by Ministers - is set out in the draft cabinet paper. It includes the case for new offences and the case for new control powers to better manage and monitor individuals in the community (which could include returned foreign terrorist fighters). This work is being led by the Ministry of Justice. Advice is not expected until mid-year.

8.

s6(a)



9. Your views on both accelerating the legislative work programme and/or extending its scope would be welcome.

Attachments

Attachments:		
Appendix A:		National Terrorism Threat Assessment (draft Cabinet paper)
Appendix B		Example of Australian public version of Australian terrorism threat statement
Appendix C:		Counter-Terrorism Strategic Work Programme (draft Cabinet paper) + Attachments

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Memorandum

SOCIAL MEDIA AND HARMFUL ONLINE CONTENT

To: Prime Minister (Rt Hon Jacinda Ardern)

Date	19/03/2019	Priority	High
Deadline	N/A	Briefing Number	1819NSPD/107

Purpose

To provide advice on:

- the engagement officials have had with social media companies on issues related to online hate speech,
- the legislative framework for addressing hate speech, and
- options for further consideration of these issues.

Recommendations

DPMC recommends that you:

- Note** the contents of this paper.

<p>Paul Ash Acting Director, National Security Policy Directorate, DPMC</p>
<p>..... / / 2018</p>

<p>Rt Hon Jacinda Ardern Prime Minister Minister for National Security & Intelligence</p>
<p>..... / / 2018</p>

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Paul Ash	Acting Director, National Security Policy Directorate	s9(2)(a)	✓

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
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SOCIAL MEDIA AND HARMFUL ONLINE CONTENT

Context

1. On 19 March 2019 your office requested advice on:
 - a) Engagement officials have undertaken to date with Facebook,
 - b) The relevant rules and legislative framework for hate speech, and
 - c) Options for further consideration of these issues.
2. This paper has been consulted with Ministry of Justice, Department of Internal Affairs, and CERT NZ.

Engagement with social media companies

Facebook

Engagement with Facebook

3. Agencies regularly engage with Facebook on operational issues. A number have engaged with Facebook on operational and/or policy issues relevant to their responsibilities in the days following the Christchurch terrorist attack, including the Department of Internal Affairs, Police, Ministry of Culture and Heritage, and Netsafe (a largely government-funded NGO). CERT NZ also worked with DIA, Netsafe and New Zealand's large network operators to block access to harmful digital content arising from the incident.
4. Officials from DPMC met with Facebook in early March 2019. At that meeting officials discussed their concern at the proliferation of terrorist content on social media platforms, and requested Facebook be more responsive to the legitimate safety and security expectations of the governments of countries where it operates. Officials also signalled interest in disinformation and the role of social media companies in combatting it.

Facebook's approach to harmful online content

5. Facebook is one of the more popular platforms used to host hate speech, but hate speech appears on a wide variety of other social media platforms such as Reddit, Twitter and YouTube (Google), and within messaging services.¹
6. Facebook defines hate speech as 'anything that directly attacks people based on what are known as their 'protected characteristics' – race, ethnicity, national origin, religious affiliation, sexual orientation, sex, gender identity, or serious disability or disease'.
7. Facebook, when considering hate speech, takes into account the following:

¹ There are other websites with a free speech ethos where hate speech has been distributed (like 4chan, 8chan and Gab). Hate speech can also be spread by torrenting and file-hosting, which are more difficult to block but lack the widespread reach that sharing via social media provides.

- a) Context – this includes the speaker and audience, consideration of the regional or linguistic context, and the evolution of language or the words used.
 - b) Intent – the intent of those “speaking” is important, because it could be argued that some expressions could be said for “non-hateful reasons such as making a self-deprecating joke or quoting lyrics from a song”. Included here is the use of satire or comedy to make a point about hate speech, or the reclaiming of offensive terms that were used to attack a particular group
 - c) Mistakes – Facebook acknowledges that it gets things wrong. It notes that, in addition to its own reviewers, it relies on communities to identify instances of hate speech, and that it is not always easy to judge whether something qualifies as hate speech.²
8. Globally, on average Facebook deletes 66,000 posts per week that contravene its definition of hate speech.³ Current reports indicate Facebook removed 1.5 million instances of the Christchurch mosque shootings video in the first 24 hours after the event.
 9. Facebook, like Twitter and Google, increasingly employs the use of computer algorithms to detect harmful online content, using analysis of the content itself and patterns of user engagement with it. Takedowns need to involve a mixture of human and artificial intelligence components, neither of which are completely effective, given the speed at which content is posted and the number of people who can post it.
 10. Facebook also has a real-name policy, which is intended to deter the spread of harmful online content by forcing users to be transparent about their identity on the platform.

What legislation addresses hate speech and harmful online content?

11. New Zealand’s media content regulation regime seeks to prevent harm to consumers and subjects of media content. It is designed to prevent harm from people viewing unwanted or unsuitable content. It ensures media content is held to a high standard while still protecting freedom of expression.
12. The current regime is enabled by the Films, Videos, and Publications Classification Act 1993 (the Classification Act) and the Broadcasting Act 1989 (the Broadcasting Act), with the Office of Film and Literature Classification (OFLC) and the Broadcasting Standards Authority (BSA) as regulators under their respective regimes. In addition, the New Zealand Media Council (the Media Council), a self-regulatory body, operates a voluntary code and plays a role in the current regime. The components of this framework are outlined below and detailed in Annex One.

Films, Videos, and Publications Classification Act

13. The Classification Act, administered by DIA, was designed to provide a framework for classifying films, videos, and publications, restricting the availability of harmful content, and creating offences related to objectionable material.

² Paul Spoonley, Hate speech in the age of the internet. May 2018.
<https://drive.google.com/file/d/1lw6c3AxfyGRAT4YeOhdhlW6SI6Sucb/view>

³ ibid

14. The Chief Censor classified the Christchurch streaming video clip as an 'objectionable publication' on 15 March. This makes it illegal to distribute or view the video clip in New Zealand.

Broadcasting Act

15. The Broadcasting Act is administered by the Ministry for Culture and Heritage. The legislation provides a framework to regulate content traditionally broadcast on radio and free-to-air and pay television. It covers content live-streamed through the internet. It does not cover user-generated content or on-demand content. The Act sets out a process for complaints to be made about content that breaches standards.

New Zealand Media Council offers a voluntary code and relies on membership compliance

16. The Media Council is a self-regulatory body with voluntary membership. It was established in 1972 to provide the public with an independent forum for resolving complaints involving newspapers, magazines, websites of such publications and other digital media. It is funded by industry. The Media Council's intention is to uphold high ethical standards by applying 12 principles to its members. The principles include accuracy, fairness, balance, privacy, discrimination and diversity. If a complaint is upheld, the Media Council can order a correction or a retraction.

Harmful Digital Communications Act 2015

17. The Harmful Digital Communications Act 2015 (HDCA) is intended to deter, prevent and mitigate harm caused by digital communications and to provide victims (but not the wider public – i.e. this is a private regime) of harmful digital communications with a quick and efficient means of redress. At the heart of the Act are ten communications principles that together describe a broad range of challenging online communications that people can send and receive. Safe harbour provisions provide protection against liability for online content hosts if they remove content while complying with certain procedural steps. This is a reactive mechanism and does not apply to proactively removing content.

Human Rights Act 1993

18. The Human Rights Act 1993 (HRA) makes it unlawful to broadcast, publish or distribute written material which is threatening, abusive or insulting, or to use threatening, abusive or insulting words in public places if such actions are likely to excite hostility against or bring into contempt any group of persons in New Zealand on the ground of colour, race or national or ethnic origins of that group of persons.
19. Section 131 of the HRA also makes it a criminal offence to, with intent to excite hostility or ill will against, or bring into contempt or ridicule, any group of persons on the ground of colour, race or ethnic and social origins of the group, publish or distribute written matter, or use words in a public place, that are threatening, abusive or insulting and are likely to excite ill will or hostility to that group.

Sentencing Act 2002

20. The Sentencing Act 2002 includes provisions to make it an aggravating feature if the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability.

New Zealand Bill of Rights Act 1990

21. Set alongside these protections is the New Zealand Bill of Rights Act 1990, which gives everyone the right to freedom of expression, including the right to seek, receive and impart information and opinions of any kind in any form, and provides for freedom from discrimination and a range of other protections.

Future options for addressing hate speech and other harmful online content

22. Officials have identified a range of preliminary options to progress work on addressing hate speech and other harmful online content, particularly where social media provides a means of quickly disseminating this content widely. These preliminary options include (but are not limited to):

a) **Reviewing the adequacy of current legislation relating to hate speech**

This work would particularly focus on the HRA and HDCA, and consider extending the definition to include religion and other characteristics, strengthening the HRA's criminal provisions relating to hate speech, and looking at the operability of the HDCA in practice.

In recent days the Minister of Justice and his Ministry have had initial discussions about:

- improving data collection of hate speech and similarly-motivated crime;
- gaps in the current law relating to hate speech; and
- the adequacy of levers in the system for responding when such behaviour occurs online and can proliferate quickly across national borders.

Further consideration is required about how to progress that work and in what timeframe.

New Zealand's media content regulation is outdated and does not cater to the ways New Zealanders now use and interact with media content. DIA and MCH are proposing work to consider reform of media content regulation in New Zealand. The proposed scope may look at how we define media, and could involve a consideration of whether user-generated content is included.

b) **Formalising and expanding the government's engagement with social media companies**


This would include considering how we can improve and enhance engagement with companies on a bilateral, plurilateral, and multilateral basis. This would require a joined-up approach across government (including at Ministerial and policy/operational agency level) to push social media companies to address carriage of hate speech and other related offensive content. It would also require

an effective and well-coordinated agency structure to give substantive effect to crisis response.

Consideration should also be given to extending any such approach to network operators, given the significant role they have played in the current event, and more traditional media outlets.

- c) **Considering how to increase social media companies' receptiveness to issues arising from hate speech or harmful content on their platforms**

s9(2)(f)(iv), s9(2)(g)(i)



- 23. Officials welcome the opportunity to discuss the range of issues available with you.

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ANNEX ONE: LEGISLATION RELEVANT TO HATE SPEECH AND OTHER HARMFUL ONLINE CONTENT

Films, Videos, and Publications Classification Act

1. The Classification Act is administered by DIA and was designed to provide a framework for classifying films, videos, and publications, and to restrict the availability of harmful content.
2. Under this Act, a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good, or promotes or encourages acts of terrorism. The Chief Censor classified the Christchurch streaming video clip as an 'objectionable publication' on 15 March. Objectionable material is banned from being distributed or viewed in New Zealand.
3. The Act contains offences relating to objectionable material. There are two distinct levels of offences, a strict liability offence, and an offence that requires the defendant to have performed the action knowingly:
 - Strict liability: someone has simply performed the criminalised action (ie imported an objectionable publication), these carry a maximum penalty for an individual of a \$10,000 fine.
 - Knowingly: these offences require a *mens rea* element where the individual must have committed the prohibited action while knowing or having reasonable cause to believe that the publication was objectionable. This additional culpability is reflected in the much higher maximum sentence of 14 years imprisonment.
4. DIA, NZ Police (OCEANZ team) and NZ Customs (CEOT) work collaboratively and have differing roles to play in the investigation and prosecution of 'objectionable material' in New Zealand.
5. This Act does not currently cover online video on-demand content (VoD) produced by subscription service providers like Netflix or TVNZ on Demand. On 11 March 2019, Cabinet approved the Minister of Internal Affairs to undertake consultation on options to include commercial VoDs in this legislation. This work is intended to address a discrete gap in the current system within a shorter timeframe. User-generated streaming videos (which would include the Facebook livestream of the Christchurch terrorist attack) were specifically excluded from scope of this consultation.

Broadcasting Act

6. The Broadcasting Act is administered by Ministry for Culture and Heritage. The legislation was designed to provide a framework that regulates content traditionally broadcast on radio and free-to-air and pay television. It covers content live-streamed through the internet. For example, TV One's 6:00 pm news bulletin can be viewed either via traditional television or accessed via TVNZ's website at the time of broadcast. It does not cover user-generated content or on-demand content. (Based on Crown Law Office advice prepared in 2015 [Ref CUL161/107]).
7. The framework is founded on 11 broadcasting standards which are co-designed by the Broadcasting Standards Authority and industry. The standards cover matters such as: good taste and decency, violence, law and order, children's interests, accuracy, privacy and fairness and are set out broadcasting codes for radio, free-to-air and pay television. The

codes ensure consistent standards are applied across broadcasting content, while protecting the right to freedom of expression. Standards ensure that harm is avoided, and community values are maintained while allowing flexibility for change where required.

8. Consumers can complain to a broadcaster if they believe one of the standards has been breached. If the consumer is unsatisfied with the response, a complaint can be escalated to the BSA. The BSA can receive complaints about privacy and election programmes directly. If a complaint is upheld the BSA can make orders, the most common of which are: require the broadcaster to issue a statement or apology, pay a fine up to \$5,000.
9. Under s21(d) of the Act the BSA can also issue an advisory, which refers to broadcasting standards and ethical conduct in broadcasting.

New Zealand Media Council offers a voluntary code and relies on membership compliance

10. The Media Council is a self-regulatory body with voluntary membership. It was established in 1972 to provide the public with an independent forum for resolving complaints involving newspapers, magazines, websites of such publications and other digital media. It is funded by the industry. The Media Council's intention is to uphold high ethical standards by applying 12 principles to its members. The principles include accuracy, fairness, balance, privacy, discrimination and diversity. If a complaint is upheld, the Media Council can order a correction or a retraction.

Harmful Digital Communications Act 2015

11. The Harmful Digital Communications Act 2015 (HDCA) is intended to deter, prevent and mitigate harm caused by digital communications and to provide victims of harmful digital communications with a quick and efficient means of redress. At the heart of the Act are ten communications principles that together describe a broad range of challenging online communications that people can send and receive.
12. Principle 10 of the HDCA says that digital communication should not:

Denigrate a person's colour, race, ethnic or national origins, religion, gender, sexual orientation or disability.
13. This principle extends to a limited set of communications which could be considered hateful in nature.
14. The HDCA provides that people who are subject to a harmful digital communication may lodge a complaint with Netsafe, the approved agency under the HDCA. If Netsafe cannot resolve the complaint, the complainant may bring proceedings in the District Court and seek a range of orders, including removal of the digital communication in question and cessation and restraint of the conduct of the person responsible for it.
15. Safe harbour provisions allow online content hosts to obtain protection against liability under the HDCA if they remove content while complying with certain procedural steps, but this is a reactive mechanism and does not apply to proactively removing content.

Human Rights Act 1993

16. Section 61 of the Human Rights Act 1993 (HRA) makes it unlawful to broadcast, publish or distribute written material which is threatening, abusive or insulting, or to use threatening, abusive or insulting words in public places if such actions are likely to excite hostility against

or bring into contempt any group of persons in New Zealand on the ground of colour, race or national or ethnic origins of that group of persons.

17. Section 131 of the HRA makes it a criminal offence to, with intent to excite hostility or ill will against, or bring into contempt or ridicule, any group of persons on the ground of colour, race or ethnic and social origins of the group, publish or distribute written matter, or use words in a public place, that are threatening, abusive or insulting and are likely to excite ill will or hostility to that group.
18. The threshold for both these provisions are high.⁴ The primary mechanism for dealing with complaints about section 61 of the HRA is referral to mediation through the Human Rights Commission. If mediation does not resolve the complaint the complainant can take a claim to the independent Human Rights Review Tribunal.

Sentencing Act 2002

19. Section 9 of the Sentencing Act 2002 says that in the context of any offence, the sentencing court must take into account as an aggravating feature if the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and
 - i) the hostility is because of the common characteristic; and
 - ii) the offender believed that the victim has that characteristic.

New Zealand Bill of Rights Act 1990

20. Set alongside these protections is the New Zealand Bill of Rights Act 1990, which gives everyone the right to freedom of expression, including the right to seek, receive and impart information and opinions of any kind in any form.

⁴ Human Rights Commission. Submission in relation to the twenty-first and twenty-second periodic review of New Zealand under the Convention on the Elimination of All Forms of Racial Discrimination. July 2017.
https://www.hrc.co.nz/files/5815/0171/9366/Submission_of_NZ_Human_Rights_Commission_-_21st_and_22nd_Review_of_NZ_under_CERD.pdf



Briefing

CABINET SOCIAL WELLBEING COMMITTEE MEETING 4 DECEMBER 2019 – MANAGING NATIONAL SECURITY INFORMATION IN PROCEEDINGS

To Rt Hon Jacinda Ardern – Minister for National Security and Intelligence			
Date	2/12/2019	Priority	Routine
Deadline	4/12/2019	Briefing Number	1920NSP/038


Purpose


1. The Minister of Justice is presenting a paper at the Cabinet Social Wellbeing Committee (SWC) on 4 December 2019 about managing national security information in court and administrative proceedings. This briefing provides advice on this paper, related to your National Security and Intelligence portfolio, to support your attendance at SWC.

Recommendations

The Department of the Prime Minister and Cabinet recommends that you:

Note the contents of this briefing.

 Tony Lynch Deputy Chief Executive, National Security Group
2.12.19

 Rt Hon Jacinda Ardern Minister for National Security and Intelligence
3.12.19

Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Tony Lynch	Deputy Chief Executive, National Security Group	s9(2)(a)	s9(2)(a)	✓
Pip Swaney	Acting Director, National Security Policy Directorate	s9(2)(a)	s9(2)(a)	

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

Released under the Official Information Act 1982

CABINET SOCIAL WELLBEING COMMITTEE MEETING 4 DECEMBER 2019

Item 2 – Managing National Security Information in Proceedings

1. The Minister of Justice seeks Cabinet agreement to proposals to manage national security information (NSI) in court and administrative proceedings. The proposals form part of a suite of measures designed to strengthen the end-to-end system to prevent and respond to terrorism. The proposals are also the Government's response to Part 2 of the Law Commission's 2015 report *The Crown in Court: A Review of the Crown Proceedings Act and National Security Information in Proceedings*.
2. The paper seeks Cabinet approval to generally accept the Law Commission's recommendations and progress a new National Security Information in Proceedings Bill. The Law Commission made 30 recommendations for reform for a more consistent and coherent approach to the use and protection of NSI. The paper proposes to accept 25 of these recommendations as they stand and accept the remaining five with modifications.
3. The National Security Information in Proceedings Bill would be an overarching, coherent framework for managing NSI in court proceedings, including challenges to administrative decisions.
4. The paper also seeks to supplement the Law Commission's recommendations in civil cases involving NSI with the ability of the Crown to seek an NSI certificate from the Attorney-General and the Minister of Foreign Affairs. The effect of the NSI certificate would be a presumption against the disclosure of the information covered by it. However, once an NSI certificate is approved, the Crown or another party may apply to the court for the information covered by the certificate to be heard in a closed court process.
5. To ensure applications for an NSI certificate are supported by robust advice, the National Security Group will work with relevant agencies to agree a process for the Crown to follow when making an application for an NSI certificate.

6. s9(2)(g)(i)

7.

8. The National Security Group has been involved throughout the development of these proposals. The National Security Group considers the proposals strike an appropriate balance between principles of open and natural justice with the protection of national security. We recommend you support this item.