



AUGUST 3RD, 2022

Kei te rangatira, tēnā koe - Dear Sir/Madam,

Re: Consultation on the Wayfinding for Justice Strategy

About this submission

This submission is made on behalf of Netsafe, Aotearoa New Zealand. Netsafe is a self-governing independent non-profit organisation. Netsafe's sole purpose is to enable all New Zealand internet users to confidently access digital opportunities and prevent online harm. It achieves this through the provision of combination of education, response, and advocacy services. This is complemented by Netsafe's statutory role under the Harmful Digital Communications Act 20151 (the HDC Act) providing 'Approved Agency' functions. Further, Netsafe has been funded by the New Zealand Ministry of Education since 2004 to provide online safety and security services to schools and their wider communities.

Netsafe's purpose informs the focus of this submission, which predominantly reflects a 'risk and safety' paradigm. However, it is important to note that Netsafe's has long promoted a rights-based approach in its work, positioning online safety as prerequisite for access to online opportunity and promoting positive use of digital technology. One example of this is Netsafe's early adoption of concepts of 'digital citizenship' that it continues to develop to this day. Access to justice is a key tenet of this approach, reflecting the importance of not only the rights responsibilities on individuals, organisations, and society to provide a safer online environment, but also the importance of participation in these online spaces not simply for recreation, but for commerce, education and in the democratic and justice structures of the nation.

The Harmful Digital Communications Act (2015)

New Zealand's Harmful Digital Communications Act (HDC Act) provides New Zealand's internet users to both criminal and civil sanction where they feel they have been harmed by communication online.

The purpose of the HDC Act is to deter, prevent, and mitigate harm caused to individuals by digital communications; and provide victims of harmful digital communications with a quick and efficient means of redress (s. 3). However, it also recognises that online abuse and harassment is not something that can be improved through regulation and enforcement alone. In addition to the new tools it created for the Police and the courts, Netsafe was appointed as the Approved Agency. The role of the Approved Agency under the Act is to assist all New Zealand internet users in dealing with harm and distress caused through any form of digital communication. To achieve this, Netsafe has statutory functions to provide online safety advice and education to the public, and to collaborate with government agencies and service providers.

The HDC Act is based on ten communication principles (s. 6) drawn from New Zealand law that together define a broad scope for the types of problematic digital communication.

The Wayfinding for Civil Justice Strategy

Netsafe supports the development of the strategy and agrees that its guiding principles will provide a framework that embraces and reflects the needs of the community.

- National Structure (Do we support the establishment of one, or the expansion of capacity of someone)
- Embedding Te Tiriti o Waitangi into the foundation of the Strategy (help please)

Goals and Actions Most Significant to Netsafe's work

Netsafe supports access to civil justice through two major streams of work:

1. In supporting NZ internet users to access to the civil sanctions under the Harmful Digital communications Act and,
2. In the process of persuasion, mediation, and negotiation between parties, or between parties and platforms where breaches of terms and conditions create harm but where there is no breach of legislation.

As such the goals and suggested actions of greatest relevance to our work are;

1. Community knowledge and understanding
 - 1.1 Increase communities' knowledge to support dispute prevention and early resolution.

- 1.2 Increase community access to legal information and self-help tools.
3. Dispute resolution
 - 3.1 Increase the availability of information about the range of dispute resolution mechanisms available in Aotearoa New Zealand.
 - 3.2 Ensure equitable access to the courts.
4. System knowledge
 - 4.1 Increase knowledge of how the system is currently operating and evaluate and monitor innovation and change.

Community Knowledge and Understanding

Netsafe has received over 20 000 reports of potential harmful digital communications experienced by New Zealand internet users since its establishment of its statutory function in 2016. In that time just over 1200 of those reports were assessed as likely breaches of the act, which would potentially allow the district court to make orders available to them under the act in those cases. While an individual has the right to take civil action under the HDCA even if Netsafe's summary is that it is not likely to be a breach of the act, the process that Netsafe goes through with each reporter, is an opportunity for them to understand exactly what the options open to them under the act are, and also what other avenues may be available for them to mitigate the harm that they have experienced. Moreover, with each report, resolution of the complaint is explored and often actioned at a level below the HDCA in mediation and negotiation either between the targets and alleged producers of the harmful communications, or between the targets and the platforms where the harmful content is located. This empowers those who experience issues, to take active steps in their resolution.

This provides the individual to seek redress without necessarily using the justice system. This form of alternate dispute resolution is the mechanism for a large majority of the complaints raised with us and is keeping with the intention of the HDCA to provide quick and efficient redress of harm from digital communications.

As such, Netsafe are encouraged by and supportive of the potential for the Wayfinding strategy to promote Community knowledge and Understanding. Our public education will continue to maintain this as a focus, and we will continue to work with

partner agencies, and the wider community to ensure that our services are understood, and that they continue to respond to the needs of our service users. We would be happy to work alongside any group to ensure our services can provide the maximum benefit to Aotearoa's Internet users.

Dispute resolution

As mentioned previously, the large majority of potential harmful digital communications reported to us, are resolved through our service via a process of persuasion, mediation and negotiation. Many agencies, both government and non-government for example the Police, CERT NZ, Youthline, refer cases to our service so that we can assist in resolving potentially harmful situations that occur in online spaces. We wholeheartedly support the goal of the strategy to increase the availability of information about the range of dispute resolution mechanisms available, and to ensure equitable access to the justice system.

It's important in the design of dispute resolution services for harmful digital communication that services and systems do not assume that those experiencing harm will report their experience to Police. Having alternative entry points to a system for resolving complaints is crucial. The HDC provides for both criminal and civil processes, which can operate in unison, and providing an individual with greater understanding of what each process can achieve and supporting them through the relevant processes goes a long way to providing greater and more effective access to the justice system.

Justice needs are about more than courts and criminal and civil processes

The broader response to online harm requires an understanding of justice needs such as participation, voice, validation, accountability, and prevention.

The civil jurisdiction of the harmful digital communications jurisdiction through alternative dispute resolution options can make people who are the target of online harm feel recognised, heard and that the harm they experienced matters.

Allowing for alternative resolution processes in these cases can mean that the targets of harm, can access sanctions, feel empowered to act, and reduce the impact of the harm they experience. It is worth noting that in cases where rangatahi create content that harms other rangatahi, this means that where appropriate, we can also allow for

successful and effective remedy to harmful situations without either party being brought into the criminal justice system.

Gaps in community knowledge and understanding

A critical gap for users of Netsafe's service is support and plain language materials to navigate court processes and outcomes. For many complainants who leave Netsafe's services with a case summary they are unsure or not equipped to initiate District Court proceedings.

While our role is to support individuals as they choose a path towards resolution of online harm, we must ensure that all aspects of that journey are well supported. By increasing system knowledge of processes currently in operation, and by creating better self-help or navigation tools for individuals and their advisers, we make the process of accessing this dispute resolution mechanism less fraught, and in turn better utilised by those who can benefit from it.