

APPENDIX A
SUMMARY OF LAW COMMISSION AND CABINET PAPER RECOMMENDATIONS

	<i>Law Commission Recommendations</i>	<i>Cabinet Paper</i>
1	A new communications offence should be created in the Summary Offences Act 1981 [drafting of proposed offence not included in this summary].	Agree. Recommendation 22.
2	Section 179 of the Crimes Act should be amended so that incitement to suicide is an offence, regardless of whether the recipient proceeds to commit suicide or not, by deleting the words "if that person commits or attempts to commit suicide in consequence thereof".	Partially agree. The paper recommends creation of a new offence of incitement to suicide which does not require an attempt or actual suicide to result from the incitement, punishable by up to 3 years imprisonment. Recommendation 24.
3	A new section 131C should be added to the Crimes Act making it an offence to expose a young person to indecent material or provide an intoxicating substance to a young person with the intention of making it easier to procure the young person for unlawful sexual activity with him or her or any other person.	Disagree. The paper notes that this behaviour is already captured by a proposed new offence of indecent communication with a person under 16 recently agreed to by Cabinet in the proposals to address child pornography.
4	The intimate covert filming provisions in Part 9A of the Crimes Act 1961 should be extended to provide a further offence in section 216J. A person (person A) who takes a visual recording of another person (person B) with person B's knowledge or consent is liable to [imprisonment for a term not exceeding 3 years] if – (a) Person A publishes the recording without person B's consent, and (b) The recording is of a kind described in section 216G(1)(a) or (b) and would be an intimate visual recording if taken without person B's knowledge or consent.	Disagree. The paper recommends that serious instances of publishing intimate recordings without consent be covered by the new offence of using a communications device to cause harm. Recommendation 23.
5	The following amendments to the Harassment Act 1997: (a) An amendment to section 4(1)(d) so that it is explicit that making contact with a person can include electronic communication; (b) That the addition of a further 'specified act' of harassment in section 4 to the following effect: "giving offensive material to a person by placing the material in any electronic media where it is likely that it will be viewed by, or brought to the attention of, that person" (c) An amendment to section 3 to provide that a continuing act over a protracted period is capable of constituting harassment (as recommended in the Law Commission's Invasion of Privacy report). (d) To make a condition of a restraining order that applies to a continuing act that the respondent must take reasonable steps to prevent the specified act from continuing.	Agree. Recommendation 25.

	Law Commission Recommendations	External Panel
6	<p>The following amendments to the Privacy Act 1993:</p> <p>(a) An amendment to the "publicly available publication" exemption in information privacy principle 11 so that the exception is not available where the disclosure of personal information obtained from such a publication would be unfair or unreasonable (as recommended in the Law Commission's Privacy Act report);</p> <p>(b) An amendment to section 56 so that the "domestic affairs" exception is not available where the disclosure of personal information would be highly offensive to a reasonable person (as recommended in the Law Commission's Privacy Act report).</p>	<p>Agree.</p> <p>The paper also recommends the same amendment to Privacy Principle 10. This was not included in the text of the Ministerial briefing, but was included in the draft Bill attached to the briefing.</p> <p>Recommendation 26.</p>
7	<p>I recommend the following amendment to the Human Rights Act 1993:</p> <p>(a) Section 62 (sexual harassment) and section 63 (racial harassment) should be amended to include an additional area of application:</p> <p>"participation in any fora in the electronic media for the exchange of ideas and information"</p> <p>(b) Section 61 (racial disharmony) should be amended to refer to electronic communications, in addition to other forms of publication.</p>	<p>Agree.</p> <p>Recommendation 27.</p>
8	<p>Complaints about offensive internet communications should go initially to an "approved agency" which would advise complainants and attempt to achieve a resolution by a process of negotiation, mediation and persuasion.</p>	<p>Agree.</p> <p>Recommendation 7.</p>
9	<p>If a complaint cannot be resolved in this way, it may then proceed to a tribunal which can make enforceable orders, provided the threshold of seriousness is reached.</p>	<p>Disagree.</p> <p>The paper recommends that disputes that cannot be resolved should be referred to the District Court.</p> <p>Recommendation 9.</p>
10	<p>The tribunal should consist of a District Court Judge drawn from a panel of District Court Judges designated for that purpose. The tribunal may sit with an expert in information communication technology.</p>	<p>Disagree.</p>
11	<p>The tribunal's jurisdiction should extend to all forms of electronic communication.</p>	<p>Partially Agree.</p> <p>The paper recommends this is the court's jurisdiction</p> <p>Recommendation 10.</p>
12	<p>Those entitled to complain to the tribunal should include the victims (other than non-natural persons), the parents or guardians where the victim is a child or young person or a person with a disability school principals on behalf of students, and, where the communication constitutes a threat to the safety of the person, the Police.</p>	<p>Partially Agree.</p> <p>The paper recommends these complainants to the court.</p> <p>Recommendation 11.</p>
13	<p>Only particularly serious cases should come before the tribunal. Complainants should have to demonstrate two things:</p> <p>(a) that they have attempted to resolve the matter through other avenues; and</p> <p>(b) that the communication complained about has caused, or is likely to cause, significant harm including significant emotional</p>	<p>Partially Agree.</p> <p>The paper recommends the second arm of this threshold to the court.</p> <p>Recommendation 12.</p>

	Law Commission Recommendation	Current Law
	distress.	
14	The tribunal must not make an order unless it is satisfied that there has been a breach of one of the principles in R15.	Partially Agree. The paper makes this recommendation in respect of the court. Recommendation 13.
15	There should be no communication of messages which cause significant harm to an individual because they: <ol style="list-style-type: none"> 1. Disclose sensitive personal facts about individuals. 2. Are threatening, intimidating or menacing. 3. Are grossly offensive. 4. Are indecent or obscene. 5. Are part of a pattern of conduct which constitutes harassment. 6. Make false allegations. 7. Contain matter which is published in breach of confidence. 8. Incite or encourage others to send messages to a person with the intention of causing that person harm. 9. Incite or encourage another to commit suicide. 10. Denigrate a person by reason of his or her colour, race, ethnic or national origins, ethnic beliefs, sexual orientation or disability. 	Agree. Recommendation 13.
16	The rules of procedure of the tribunal should facilitate speedy and relatively informal justice, ensuring however that the rules of natural justice are complied with. In particular: <ol style="list-style-type: none"> (a) The tribunal should have power to receive evidence which might not be admissible in a court of law, to decide cases "on the papers", and when a hearing is appropriate conduct it by videoconference or teleconference. (b) The tribunal should have power to take evidence on oath and to require the supply of information where that was necessary. (c) The tribunal should have the discretion to deal with the substance of the complaint in a manner that preserves the anonymity of the respondent. Where the tribunal considers that the respondent's anonymity should be removed, the respondent should be provided with the opportunity either to take steps to address the alleged harm in lieu of losing their anonymity. 	Partially Agree. (a) The paper makes this recommendation in respect of the court. Recommendations 16-17. (b) Not necessary because hearings in the court. (c) The paper makes this recommendation in respect of the court. Recommendation 18.
17	The tribunal should have power to make the following orders: <ol style="list-style-type: none"> (a) An order to take down material from the electronic media. (b) An order to cease publishing the same or substantially similar, communications in future. (c) An order not to encourage any other person to engage in similar communication with the complainant. (d) A direction that the order may apply to a person other than the defendant if there is evidence that the defendant has encouraged that other to engage in offensive communication to the complainant. (e) A declaration that the communication in question breaches the 	Partially Agree. The paper recommends that the court be able to apply a range of remedies. Recommendation 14.

	Law Commission Recommendations	Parliament
	<p>statutory principles.</p> <p>(f) An order to correct a factually inaccurate statement.</p> <p>(g) An order that the complainant be given a right of reply.</p> <p>(h) An order to apologise to a defendant, together with such other forms of restorative justice as may be appropriate in the case.</p> <p>(i) An order that the identity of the source of an anonymous communication be released.</p>	
18	The tribunal should have the power to make an order against a defendant, an internet service provider, a website host, or any other relevant internet intermediary requiring material to be taken down from the internet.	<p>Partially Agree.</p> <p>The paper recommends that the court be able to apply a range of remedies.</p> <p>Recommendation 14.</p>
19	The Chief Coroner should be able to make an application to the tribunal for an order that material relating to suicide that is prohibited by the Coroners Act 2006 be taken down from the internet.	<p>Partially Agree.</p> <p>The paper makes this recommendation in respect of the court.</p> <p>Recommendation 11.</p>
20	<p>In exercising its functions the tribunal must have regard to freedom of expression. In deciding whether or not to make an order, and the form that any such order should take, the tribunal would have to take into account relevant considerations including:</p> <p>(a) The content of the communication, its offensive nature and the level of harm caused by it.</p> <p>(b) The purpose of the communicator in communicating it.</p> <p>(c) The occasion, context and subject matter of the communication.</p> <p>(d) The extent to which it has spread beyond the original communicator and recipient.</p> <p>(e) The age and vulnerability of the complainant.</p> <p>(f) The truth or falsity of the statement.</p> <p>(g) The extent to which the communication is of public interest.</p> <p>(h) The conduct of the defendant, including the extent to which that conduct has contributed to the harm suffered.</p> <p>(i) The conduct of the complainant, including the extent to which that conduct has contributed to the harm suffered.</p>	<p>Partially Agree.</p> <p>The paper recommends that the court have regard to freedom of expression and other relevant factors in exercising its functions.</p> <p>Recommendation 15.</p>
21	The tribunal should not have the power to impose criminal sanctions or monetary sanctions.	<p>Partially Agree.</p> <p>The paper makes this recommendation in respect of the court.</p> <p>Recommendation 14.</p>
22	The tribunal should give reasons for its decisions, and they should be published.	<p>Partially Agree.</p> <p>The paper makes this recommendation in respect of the court.</p> <p>Recommendation 19.</p>
23	There should be a right of appeal on the merits from decisions of the	Partially Agree.

	Law Commission Recommendation	Review Paper
	tribunal to an appeal tribunal consisting of two District Court judges. The judges hearing the appeal should be able to sit with an advisor specialising in information communication technology. There should be special procedures to enable the appeal to be dealt with quickly.	The paper recommends that there be a right of appeal from to the High Court from the District Court's decision. Recommendation 20.
24	The tribunal or an appeal tribunal may refer a complaint to a court if it considers the complaint could more approximately dealt with by a court.	Disagree.
25	If a matter comes before a court which could be dealt with by the tribunal, the court may refer the matter to the tribunal.	Disagree.
26	A person or organisation may be appointed by the Minister as an "approved agency"	Agree. Recommendation 7.
27	<p>The functions of an approved agency should be:</p> <ul style="list-style-type: none"> (a) To advise people on steps they may take to resolve a problem caused by an electronic communication and whether they may have a ground of complaint. (b) To receive complaints about electronic communications. (c) To decline some complaints because the content of the communication is unlikely to cause harm, or is otherwise inappropriate for investigation. (d) To investigate substantial complaints and attempt to achieve settlement between the complainant and the person responsible. (e) To liaise with website hosts, ISPs and other internet intermediaries and request them to take down or moderate posts which are clearly offensive. (f) To liaise with other agencies such as schools, the Police, the Privacy Commissioner, the Ministry of Social Development and InternetNZ in attempts to resolve wider issues surrounding the communications complained about. (g) To advise the complainant to seek an order from the tribunal requiring a website host, ISP or internet intermediary to identify the author of an offensive communication. (h) To advise the complaint to refer to the tribunal: <ul style="list-style-type: none"> - any complaint which meets the appropriate level of seriousness and which has proved incapable of resolution by other means; - any complaint which is so serious, and resolution of which is so urgent that it should be referred directly to the tribunal without mediation (i) To certify that it has recommended a referral of such a complaint to the tribunal. 	Agree. Recommendation 8.
28	NetSafe should be an approved agency.	Who will be the approved agency will be determined at a later date.
29	The approved agency should also have general oversight functions including education and publicity, research and policy oversight.	Partially agree. The approved agencies functions will be set out by regulation, but will not include policy oversight.

	LEA Consultation Recommendations	Subject Paper
		Recommendation 8.
30	The approved agency should work with intermediaries and content hosts to develop guidelines and protocols regarding their relationship to the approved agency and the tribunal.	Agree. Recommendation 8.
31	National Administration Guideline 5 should be amended, to require each board of trustees to implement an effective anti-bullying programme.	Disagree. The paper notes that an amendment is not necessary as this is already required as part of the wider requirement in the Guideline to provide a safe environment. New Resources and programmes have been and will be introduced to support this requirement Recommendation 3.
32	It should be a criterion for registration of a private school that the school provide a safe and supportive environment that includes policies and procedures that make provision for the welfare of students.	This recommendation will be considered further after consultation with representatives of independent schools Recommendation 5.
33	The Ministry of Education should consider further work in the following areas: (a) the development of an agreed definition of bullying behaviour, including cyber-bullying, encouraging schools to use it in anti-bullying policies; (b) the establishment of ongoing and routine data collection systems with standardised methods for defining and measuring covert and overt forms of bullying; (c) the development of measurable objectives and performance indicators for activities intended to improve school safety; (d) the development of guidelines for the reporting of serious incidents of bullying and cyber-bullying.	(a) Disagree. The paper notes an agreed definition of bullying including cyber-bullying is already in place. (b) Agree. The paper notes that this is already underway. (c) Disagree. This is an action for individual schools but will be strongly encouraged as best practice. (d) Agree.
34	Consideration should be given to further developing the educative potential of Information and Technology (ICT) contracts to inform students about their legal rights and responsibilities with respect to communications, using for example, the set of principles developed in chapter 5 as an educative tool.	Disagree. The paper notes this should remain a matter for individual schools.