

# **Report of the Expert Group on an Individual Complaints Mechanism**

May 2022





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## 1: Executive summary

In line with the first point of its terms of reference, the Expert Group has very carefully considered the feasibility of an individual complaints mechanism, applying its collective expertise in, and experience of, online safety, the protection of children, and schemes for dealing with complaints. It has come to the conclusion that such a mechanism is feasible, subject to certain conditions being met. These are outlined in more detail in the “Dependencies” section of the document, but it is worthwhile summarising the two major conditions here.

Firstly, the system **must** recognise the primacy of the major new developments in systemic regulation – those encompassed in the Online Safety and Media Regulation Bill itself, those envisaged in the Digital Services Act, provisional political agreement on which was reached by the European Parliament, European Commission and Council of the European Union on 23 April 2022, and any future developments in the area. The Expert Group is acutely aware of the risk of Coimisiún na Meán (the Media Commission) drawing criticism for the failings of the regulated entities to adequately comply with systemic rules. In this regard, an individual complaints mechanism should not be viewed as a replacement for the online platforms’ complaint handling processes.

The online world is now all-encompassing, and the number of daily interactions between service users and online platforms is enormous. Direct intervention in complaints about all such interactions would be beyond the scope of any national or international body. The primary responsibility for ensuring that platforms meet their obligations to provide the appropriate level of protection to their users, including vulnerable groups, must lie with the platforms themselves both in terms of their compliance with systemic regulation and as a matter of corporate responsibility. Regulators, including An Coimisiún, act as a second line of defence in monitoring and auditing compliance with those obligations in order to hold platforms to account. Where an individual complaints mechanism is in place, it must be seen as a last port of call and as a complement to, and not a substitute for, the compliance, responsibility and accountability of the platforms.

Secondly, the regulator **must** be appropriately staffed and resourced. As the European headquarters of many of the main global technology companies are located in Ireland, the Irish regulatory system will be very much in the spotlight in the coming period. The Expert Group is acutely aware of the reputational risk to Ireland should the system be perceived as under-performing. However, it will only be possible to judge the real scale of demand for the individual complaints mechanism when systemic regulation is up and running. This is because effective systemic oversight should significantly reduce individual complaints. For this reason, we have proposed a phased approach to the introduction of an individual complaints mechanism to be operated by An Coimisiún. This will allow An Coimisiún itself to continuously revise and refine its resource requirements. These will include staff with a high level of expertise in understanding the operation of the online platforms’ systems and algorithms – a scarce and expensive resource that will also need to first and foremost be directed towards systemic regulation. The Expert Group believes that it is important that administrative and political attention and support regarding the resourcing requirements of the individual complaints mechanism be sustained, not just at its inception but on an on-going basis.

Finally, the Expert Group would like to pay tribute to the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media for the diligence and expertise with which it supported the Expert Group via the Secretariat, at a very busy time.

### a. Dependencies

The Expert Group emphasises that the individual complaints mechanism will not have its full or intended effect unless and until:

1. Coimisiún na Meán sets out robust standards in complaints handling for designated online services in the relevant online safety codes applicable to the category of designated online services subject to the individual complaints mechanism.
2. Coimisiún na Meán ensures alignment between the standards in complaints handling set out in online safety codes and the relevant provisions on the internal complaints handling systems of providers of online platforms in the Digital Services Act.

3. Coimisiún na Meán is provided with sufficient time to a) develop online safety codes for complaints handling, and b) for these codes to have been in place for a period of time such that An Coimisiún can gather sufficient information about their impact and review their operation before an individual complaints mechanism is introduced. This is essential in order for it to be able to (a) assess the areas where the further safeguard of an individual complaints mechanism is most urgently needed and (b) further quantify the scale and nature of resources required to successfully implement such a mechanism.
4. Coimisiún na Meán is afforded the discretion to handle and conclude complaints in the manner it deems most appropriate and is not unduly compelled toward or statutorily proscribed to certain courses of action in the Bill.
5. Coimisiún na Meán builds strong relationships with designated online services so that complaints may be concluded to the extent possible without recourse to An Coimisiún's formal powers.
6. Coimisiún na Meán builds strong relationships with An Garda Síochána, Hotline.ie, the Data Protection Commission and other relevant bodies in order to appropriately triage complaints as they are received to ensure that they are dealt with by the most appropriate body.
7. Coimisiún na Meán is provided with a robust legal basis for transferring or copying complaints to other bodies as part of the triage process.
8. Coimisiún na Meán is provided with the appropriate level of financial and human resources (including specialist resources) in order to operate the individual complaints mechanism, including by recourse to the industry levy established by section 7 of the Online Safety and Media Regulation Bill 2022 (inserting section 21 of the Broadcasting Act 2009), or other sources of funding as appropriate and sustainable. These resources must be accounted for separately to those allocated to setting up and implementing systemic regulation in order to prevent the stretching of resources.
9. Coimisiún na Meán robustly exercises its functions in relation to education, public awareness and guidance, focusing on co-operation with existing educational bodies such as the Department of Education, Webwise.ie and the National Council for Curriculum and Assessment, building upon existing initiatives such as the Media Literacy Ireland Network and engaging with the European Commission's Better Internet for Kids Strategy.

## b. Recommendations

In light of the above, the Expert Group recommends that:

1. Provision be made within the Online Safety and Media Regulation Bill 2022 for an individual complaints mechanism along the lines of the provision outlined in **Appendix 2**, subject to necessary legal adjustments by the Office of Parliamentary Counsel, to be implemented on a phased basis by Coimisiún na Meán, and in line with the phasing set out in the recommended approach to implementation below.

### i. Structure and operation of an individual complaints mechanism

2. The operation of the individual complaints mechanism be overseen by Coimisiún na Meán but be structurally separated from the operation of the systemic online safety regulation functions. This could be done by either a) appointing a second and separate Online Safety Commissioner to the Online Safety Commissioner who will be responsible for the systemic online safety regulation, or b) the Online Safety Commissioner overseeing a specific functional area for the individual complaints mechanism led by a Director.
3. Coimisiún na Meán be enabled to handle complaints relating to the categories of harmful online content set out in section 44 of the Online Safety and Media Regulation Bill 2022 (inserting section 139A(3) of the Broadcasting Act 2009) which relate to non-offence specific content, initially prioritising those complaints regarding online content which pertains to children.
4. Coimisiún na Meán be enabled to triage complaints relating to the offence-specific categories of harmful online content set out in section 45 of the Online Safety and Media Regulation Bill 2022 (inserting Schedule 3 of the Broadcasting Act 2009) in co-operation with An Garda Síochána, Hotline.ie and other relevant bodies.

5. In the event that An Garda Síochána or another relevant body under recommendation 4 informs Coimisiún na Meán that they are not pursuing a complaint relating to offence-specific content, An Coimisiún should be enabled to handle the complaint.
6. Complaints may be made to Coimisiún na Meán only where a complainant has first complained to the provider of the designated online service through which the alleged harmful online content is available and where either a) the complainant is unsatisfied with the provider's response, or b) an unreasonable period of time has elapsed without a response from the provider.
7. Coimisiún na Meán be given discretion to accept complaints where any of the thresholds set out in recommendation 6 are not met where it considers it appropriate to do so in particularly urgent or serious cases.
8. To facilitate and enable the operation of the individual complaints mechanism within the structure of the Bill, Coimisiún na Meán will create a list of those designated online services that the individual complaints mechanism applies to by creating a category of those designated online services which are a) subject to an online safety code on complaints handling and b) where a complaint may be made under the individual complaints mechanism about alleged harmful online content available through those services.
9. Coimisiún na Meán be empowered to handle and conclude complaints in the manner it deems most appropriate, including by a) issuing a content limitation notice, b) engaging with providers of designated online services to the extent possible in order to achieve a positive resolution, including by remitting a complaint back to the service provider, c) engaging with An Garda Síochána and other relevant bodies in order to triage complaints if necessary, d) grouping complaints, or e) providing advice or support to a complainant, including by signposting relevant services.
10. Coimisiún na Meán also be given the power to dismiss a complaint a) by determining that the online content subject to the complaint is not harmful online content, or b) where the complaint is frivolous or vexatious.
11. When handling complaints, Coimisiún na Meán be required to have regard to a set of principles, including regarding the rights of all relevant parties<sup>1</sup>, the rights of the child as set out in the United Nations Convention on the Rights of the Child<sup>2</sup>, the desirability of concluding complaints swiftly, and the desirability, proportionality and effectiveness of any outcome.
12. Coimisiún na Meán periodically publish information regarding its receipt and handling of complaints, including the outcomes of complaints and relevant case studies.

## ii. Recommended approach to implementation

The Expert Group highlights that the interplay between the recommendations and dependencies above would make it unfeasible for Coimisiún na Meán to begin operating the individual complaints mechanism in full on a short-term basis. However, the Expert Group does not consider that the introduction of elements of the individual complaints mechanism should be delayed until the mechanism can be introduced in full. Instead, the Expert Group recommends that the legislation and the regulator should set out a path for the individual complaints mechanism to be introduced on a phased basis, as follows:

1. Following its establishment, Coimisiún na Meán should develop one or more online safety codes regarding standards in complaints handling for designated online services under Section 44 (inserting section 139K into the Broadcasting Act 2009) of the Bill.
2. Coimisiún na Meán should monitor compliance with the online safety codes on complaints handling and its impact over a period of at least 12 months, in order to build up the data required to (a) assess which categories of harmful online content most urgently need to be further tackled via an individual complaints mechanism and (b) quantify the scale of the task involved.
3. Coimisiún na Meán, following the period of 12 months set out in point 2, should as an initial step develop a scheme, under the legislative provision for the individual complaints mechanism, to accept complaints about alleged harmful online content which a) relates to one or more of the non-offence-specific categories of harmful online content and b) where the online content in question pertains to a child.

<sup>1</sup> As recognised by the Irish Constitution and the Charter of Fundamental Rights of the European Union.

<sup>2</sup> As expressed by the Committee on the Rights of the Child through in its General Comment number 25 under the Convention on children's rights in relation to the Digital Environment.

4. Coimisiún na Meán should, following the period of 12 months set out in point 2, develop and publish a 3 year work plan for how it will progressively work towards operating the individual complaints mechanism in full, including indicative timelines for the commencement of further schemes and resourcing requirements.

It is important that Coimisiún na Meán has discretion regarding the details of its work plan and its priorities, including the order in which it develops further schemes. It is also important that the legislation providing for an individual complaints mechanism requires a review of the operation of the provision for the mechanism within a reasonable period of time, having regard to the recommended approach to implementation above.

The Expert Group would also emphasise that, in light of the dependencies above, the appropriate and on-going resourcing of An Coimisiún, including in relation to the recruitment of persons with appropriate expertise, is vital to the functioning of both the systemic regulatory framework for online safety and the individual complaints mechanism.



## 2: Introduction

### a. Policy context

#### i. Purpose of the Online Safety and Media Regulation Bill

The Online Safety and Media Regulation Bill 2022 sets out a systemic regulatory framework for online safety. This framework empowers Coimisiún na Meán (the Media Commission) to tackle the availability of defined categories of harmful online content through binding online safety codes and other measures. These codes will set out rules and expectations for how designated online services can make their services safer, including in relation to standards for complaints handling.

An Coimisiún will have robust powers of investigation, information gathering and sanction, including the ability to audit designated online services in respect of their handling of complaints and to require them to report on their handling of complaints on a periodic basis. In addition, An Coimisiún is obliged to create a super-complaints scheme under which nominated bodies can formally bring issues to the attention of the regulator.

The categories of harmful online content covered by the Bill include offence-specific content linked to a schedule of 40 criminal offences and a number of other categories of content, incorporating cyberbullying content, content promoting suicide or self-harm or providing instructions in relation to such, and content promoting eating disorders. These latter categories are subject to a risk test regarding risk to life or a reasonably foreseeable risk to physical or mental health. The Bill provides that all determinations about whether any particular online content is harmful is to be done on the balance of probabilities. The Bill provides for a process by which further categories of content may be specified, subject to Oireachtas oversight.

The online services covered by the Bill include Video-Sharing Platform Services (e.g. YouTube, TikTok, Twitter, Instagram), which are required to be regulated as a category under the revised Audiovisual Media Services Directive on an EU-wide basis in respect of their video content. In addition, An Coimisiún is provided with the power to designate a wide range of other online services which facilitate access to user-generated content on the basis of risk assessments in respect of their activities in Ireland. This includes the potential designation of Video-Sharing Platform Services in respect of their non-audiovisual content.

#### ii. Pre-legislative scrutiny and relevant recommendations

In their report of their pre-legislative scrutiny of the General Scheme, or template, of the Online Safety and Media Regulation Bill, the Joint Oireachtas Committee on Tourism, Culture, Arts, Sport and Media set out, among others, the following recommendations:

##### **Recommendation 4**

The Committee recommends that provisions be made for an individual complaints scheme within the General Scheme of the Bill.

##### **Recommendation 5**

The Committee recommends that, where provisions are made for an individual complaints scheme, these provisions be responsive to the needs and protection of children and other vulnerable groups, and that these include effective takedown procedures and other appropriate measures.

The Joint Oireachtas Committee's report was received by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, Catherine Martin, on 2 November 2021.

### iii. Publication of the Bill

Following receipt of the report, Minister Martin brought a memorandum to Government in January 2022 seeking approval to publish the Bill and introduce it into the Houses of the Oireachtas for consideration for enactment. The Bill was published on 25 January 2022 and introduced into Seanad Éireann on 22 February 2022.

In bringing the memorandum to Government, Minister Martin signalled her intention to establish an Expert Group on an Individual Complaints Mechanism to examine the matters raised by the recommendations 4 and 5 of the Joint Oireachtas Committee and to bring their findings to her within 90 days.

### iv. Digital Services Act

The Digital Services Act is a proposed Regulation of the European Union which is currently subject to negotiations between the Member States of the Union, the European Parliament and the European Commission.

The Regulation is intended to do 4 keys things, these being:

- ▼ To maintain and modernise the foundational principles of legal liability as they relate to online services;
- ▼ To harmonise certain procedures for dealing with illegal content online, for example the process by which national authorities, including Courts, issue take-down orders;
- ▼ To introduce due diligence obligations for most online services;
- ▼ To introduce systemic due diligence obligations for very large online services, i.e. those services with over 45 million active users in the EU.

The Regulation obliges Member States to appoint one or more competent authorities to enforce the provisions of the Regulation. It specifies that Member States shall designate one competent authority as the Digital Services Coordinator (DSC) to co-ordinate the work of the competent authorities and to act as the single point of contact for the DSCs of other Member States and the European Commission in respect of the enforcement of the Regulation.

In this regard, the Government decided, on 1 March 2022, that Coimisiún na Meán, as established by the Online Safety and Media Regulation Bill, will act as the DSC for Ireland. Following the enactment of the Bill and agreement by the EU on the Regulation, it is intended that further legislation will be developed by the Department of Enterprise, Trade and Employment to assign these functions to An Coimisiún during the implementation period for the Regulation.

Government made this decision in light of the clear synergies between the objectives and approaches of Coimisiún na Meán and the DSC, including taking a systemic approach to dealing with online safety and platform regulation and similar resourcing needs and expertise for implementation and enforcement.

### v. Education

The Online Safety and Media Regulation Bill sets out a number of functions of Coimisiún na Meán in relation to education, awareness raising and providing guidance, both to service providers and to members of the public, including children. As a general function, section 7 (inserting section 7(3)(f) into the Broadcasting Act, 2009) of the Bill sets out that An Coimisiún shall:

“encourage research, promote or endorse educational initiatives and activities and co-operate for that purpose with educational bodies, and otherwise promote public awareness, knowledge and understanding, in relation to matters connected to its functions”

This will enable An Coimisiún to engage with those public bodies with a lead role in relation to online safety education such as the Department of Education, Webwise.ie and the National Council for Curriculum and Assessment in order to drive educational initiatives in relation to online safety. It also

enables An Coimisiún to engage with existing commercial and non-commercial providers of online safety educational services, to co-operate with them on educational initiatives and to endorse their initiatives and activities if appropriate.

Further to this, a robust definition of media literacy is provided in section 3 of the Bill to support An Coimisiún in carrying out its education and awareness raising functions. At present, the Broadcasting Authority of Ireland supports the Media Literacy Ireland Network. This network brings together a wide range of stakeholders to work together on media literacy initiatives and to exchange best practices. It is intended that An Coimisiún would carry forward this work following its establishment.

## b. Establishment of the Expert Group

In late January 2022, Minister Martin established an expert group to examine the possibility of providing for an individual complaints mechanism in the Online Safety and Media Regulation Bill. The Minister established the Expert Group on foot of the two recommendations of the Joint Oireachtas Committee about an individual complaints mechanism.

The Minister set out the task of the Expert Group to examine whether it is practicable to include an individual complaints mechanism in the Bill and, if so, how it would work in practice. The group was given 90 days, beginning from the date of their first meeting, to examine these matters and to report back to the Minister.

The Minister stated that she will consider amending the Bill as it passes through the Oireachtas on the basis of the recommendations of the Expert Group. In this regard, the Minister acknowledged the complexity of providing for avenues of redress in the online world and noted that any proposals she may bring forward to address this issue must be practical and legally robust.

The Expert Group has six members, including a chairperson, with a range of regulatory, legal, legislative, academic and practical expertise in online safety, child protection and complaints handling. The membership of the expert group is listed in **Appendix 1**.

## c. Terms of reference

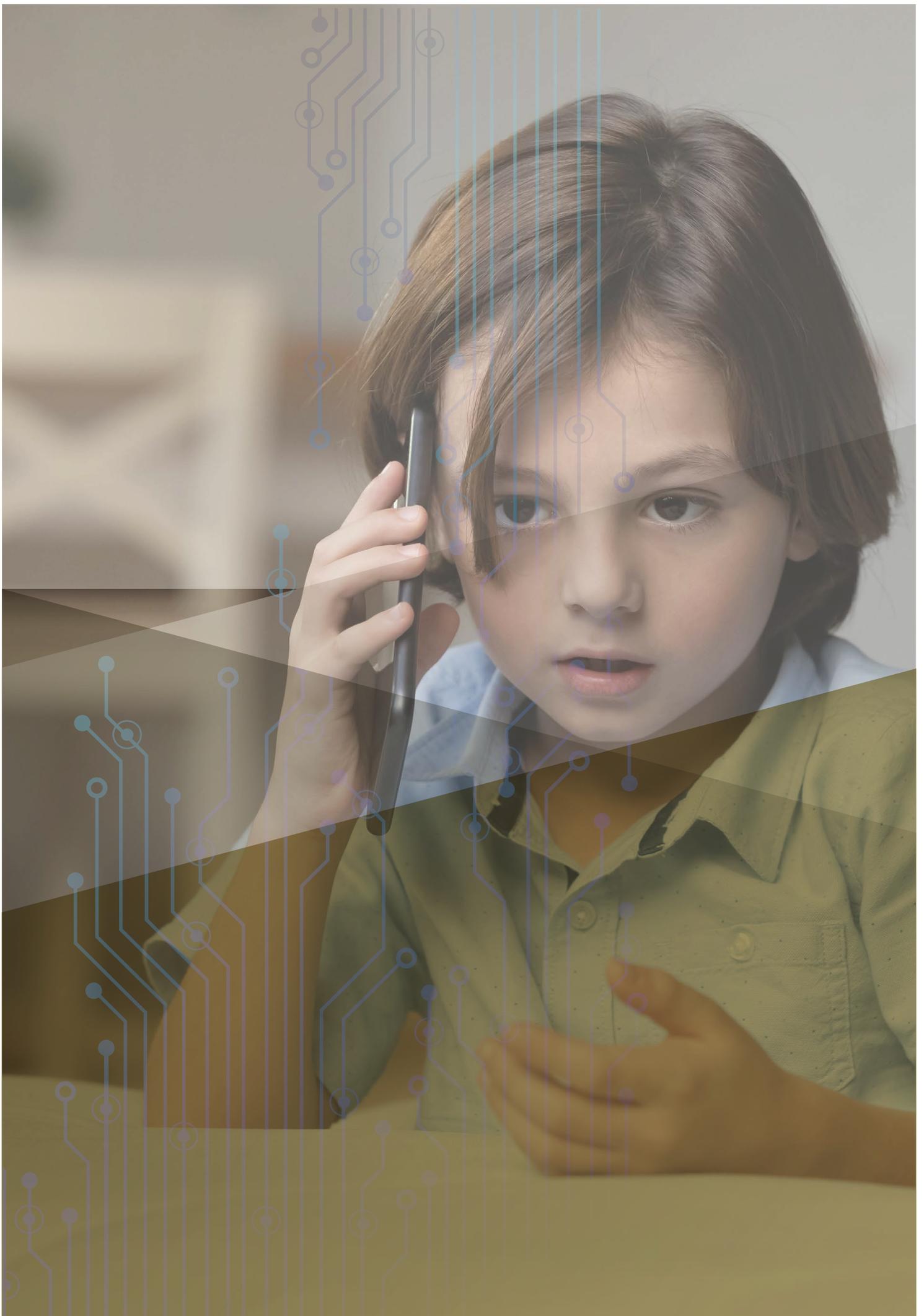
The terms of reference of the Expert Group are as follows:

1. To examine if an individual complaints mechanism is practicable in the context of the Online Safety and Media Regulation Bill and, if not, if there is another method of resolving matters raised by such a mechanism;
2. To consider the scope of such a scheme, in terms of both the online services and online content that would be covered, taking into account the nature and volume of online content and the overall purpose of the Online Safety and Media Regulation Bill.
3. To examine the fundamental rights and due process requirements for complainants, online services and the uploaders of the content subject to a complaint, taking into account relevant provisions on such matters in section 46 (Part 8B – Chapter 7 of the 2009 Act) of the Online Safety and Media Regulation Bill, which provides an Online Safety Commissioner with the power to issue content limitation notices.
4. To consider the operations of any such scheme, in light of best practices by public bodies in receiving and processing complaints, appeals or requests for review from members of the public;

This would include:

- a. The thresholds which must be met by a complainant before their complaint is accepted by an Online Safety Commissioner;
  - b. The threshold which must be met before an Online Safety Commissioner may issue a content limitation notice on foot of a complaint; and
  - c. The process by which an Online Safety Commissioner would receive and acknowledge complaints and engage with complainants, online services and the uploaders of the content subject to a complaint about the complaint, including regarding the outcome of any complaint.
4. To consider the resource implications and timing in respect of the introduction of any such scheme;
  5. To recommend such draft amendments to the Online Safety and Media Regulation Bill as are necessary to underpin any proposals put forward by the Expert Advisory Group for an individual complaints mechanism; and
  6. To report to the Minister within 90 days of the expert advisory group's establishment

**Definition:** For the purposes of these terms of reference, an “individual complaints mechanism” is a mechanism whereby members of the public may complain to an Online Safety Commissioner about individual items of content that they suspect may fall within a category of harmful online content.



### 3: Work of Expert Group

#### a. Work programme

Upon its establishment, the Expert Group decided to set out a work programme to guide its consideration of the issues raised in their terms of reference. This work programme, as amended over time, was as follows:

Week	Actions	Outputs
1 (31 Jan)	<p>Introductions</p> <p>Preliminary discussion of main issues involved and criteria for decision-making</p> <p>Identify areas for background reading</p> <p>Seek views on possible consultation</p>	<p>Agreed work programme</p> <p>Identify further areas for exploration based on terms of reference</p>
2 (7 Feb)	<p>Discuss options for consultation methodology and timing</p> <p>Discuss possible criteria for evaluating regulatory options</p> <p>Preliminary discussion on main issues for report and potential regulatory options</p> <p>Explore issues re: data sharing with other actors in the regulatory landscape</p> <p>Explore jurisdictional issues re: scope of potential complaints mechanism</p>	<p>Identified options for consultation mechanism</p> <p>Identified criteria for evaluating regulatory options</p>
3 (14 Feb)	<p>Agree consultation process</p> <p>Discuss contents of consultation document</p> <p>Agree criteria for evaluating regulatory options</p> <p>Discuss potential consultees (both online and face-to-face)</p> <p>Preliminary discussion on potential regulatory options</p>	<p>Consultation process formally agreed</p> <p>Criteria for evaluating regulatory options formally agreed</p> <p>Proposed list of expert consultees</p>
4 (21 Feb)	<p>Agree consultation document</p> <p>Discuss revised work programme and consultation schedule</p> <p>Preliminary discussion on possible structure/format of final report</p> <p>Discuss mediation provisions in OSMR Bill; legal test for triggering of EU-wide obligation to deal with complaints</p>	<p>Consultation document formally agreed</p> <p>Agreement on work programme and consultation meeting schedule</p>
5 (28 Feb)	<p>Discuss dealing with responses to consultation</p> <p>Discuss format and priorities for face-to-face consultations</p> <p>Further discussion on potential regulatory options (to be resumed once consultation has been completed)</p> <p>Further discussion on possible structure/format of final report</p> <p>Discussion on process and due process issues regarding an individual complaint mechanism</p>	<p>Agreed schedule of individual meetings</p> <p>Agreed format and priorities for face-to-face consultations</p>
6 (7 Mar)	<ol style="list-style-type: none"> <li>1. Consultation round 1: discussions with Department of Canadian Heritage</li> <li>2. Discuss methods for estimating potential scope and scale of complaints, and their resourcing implications for an individual complaints mechanism</li> </ol>	
7 (9 Mar)	<p>Consultation round 2: discussions with the Office of the e-Safety Commissioner, Australia</p>	

Week	Actions	Outputs
8 (14 Mar)	<ol style="list-style-type: none"> <li>1. Consultation round 3: discussions Office of the Data Protection Commissioner</li> <li>2. Discuss potential interplay between Digital Services Act and individual complaints mechanism</li> </ol>	
9 (21 Mar)	<p>Discuss mechanism for calculating the potential number of individual complaints</p> <p>Further discussion of potential interplay between Digital Services Act and an individual complaints mechanism</p> <p>Overview of scenarios on an individual complaints mechanism</p>	
10 (28 Mar)	<p>Discuss responses to public consultation</p> <p>Further discussion of potential regulatory options</p>	<p>Agreement on main regulatory options</p> <p>Preliminary indication of preferred option</p>
11 (4 Apr)	<p>Further discussion on calculation of scale of individual complaints and resource requirements</p> <p>Full discussion of regulatory options</p>	<p>Preliminary indication of preferred option</p>
12 (11 Apr)	<p>Discuss feedback on report template and agree</p> <p>Final consideration of regulatory options</p>	<p>Agreement on report template</p> <p>Agreement on broad scope of regulatory options</p>
13 (18 Apr)	Easter week – no meeting	
14 (25 Apr)	Final report	
15 (2 May)	Final report	

## b. Evaluation criteria

The Expert Group developed a set of criteria against which to evaluate emerging regulatory options. These criteria are as follows:

**Efficiency and effectiveness:** Whether the option would substantially contribute to the aim of an individual complaints mechanism in a practical manner.

**Fairness, equity and human rights:** Whether the option provides for the vindication of the rights of relevant parties, including children, in a balanced way.

**Risk:** Whether the option gives rise to risks to the sustainable operation of an individual complaints mechanism, the good functioning of regulatory systems, or the rights of relevant parties, particularly children.

**Coherence:** Whether the option would sit comfortably and potentially contribute to the regulatory systems foreseen in the Online Safety and Media Regulation Bill.

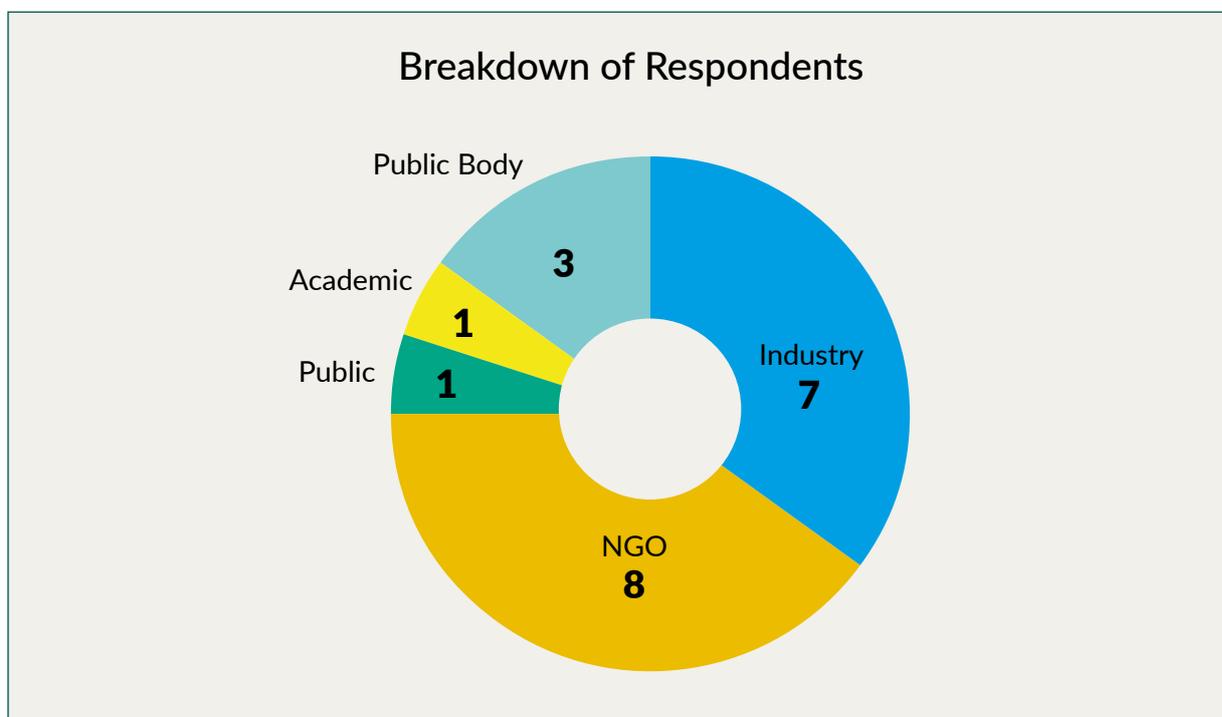
**Acceptability:** Whether the option satisfies public demand and expectations.

These criteria informed the consideration of the emerging regulatory options detailed in the next chapter of this report on issues and recommendations and in the conclusion chapter.

### c. Summary of public consultation

As part of their work programme, the Expert Group decided to carry out a public consultation in order to inform their consideration of the issues raised in their terms of reference.

This consultation was open from 28 February 2022 to 21 March 2022 and 20 responses were received, primarily from industry and Non-Governmental Organisations (NGOs). A list of the respondents to the consultation can be found at **Appendix 3**.



The following are a number of themes which the Expert Group identified as emerging from the consultation responses:

- ▼ An emerging view that while it is possible to put in place an individual complaints mechanism, doing so requires the allocation of significant and sustained resources. There were differing views, particularly between Industry and NGOs about whether the risk of under resourcing an individual complaints mechanism, including risks of diverting resources from the systemic online safety regulatory system, undermined the viability of the mechanism in practice.
- ▼ General agreement on the importance of the availability of avenues of redress and remedy, particularly for children, and an acknowledgement of the risk of those affected by harmful online content having limited or highly impractical routes to recourse.
- ▼ A recognition of the potential value of an individual complaints mechanism in informing the system of systemic online safety regulation of key and emerging online safety issues.
- ▼ Different views on the scope of the online content that should be covered by an individual complaints mechanism. Some respondents suggested that all categories of harmful online content provided for in the Bill in relation to systemic regulation should be covered and other respondents suggested that only the non-offence-specific categories should be covered with a few of those suggesting that complaints relating to offence-specific categories could be triaged in co-operation with An Garda Síochána and other relevant bodies.
- ▼ That issues of scale and the potential volume of complaints, including a potential EU-wide scale, can be mitigated through, among other things, the imposition of robust standards in complaints handling for designated online services, requiring complainants to engage with those services in the first instance, and by providing the regulator with discretion and flexibility in terms of how it can handle complaints.

- ▼ That procedures would need to be built into an individual complaints mechanism to ensure the protection and vindication of fundamental rights, including those of the complainant, the uploader of the content and other affected parties, and in relation to fair procedures.
- ▼ That an individual complaints mechanism should be overseen by the Online Safety Commissioner within Coimisiún na Meán, though certain stakeholders noted that a second Online Safety Commissioner may be preferable.

#### **d. Summary of expert meetings**

During the course of its work, the Expert Group held a number of meetings with public bodies examining or operating individual complaints mechanisms. The Expert Group held meetings with:

- ▼ The Data Protection Commission – 14 March 2022;
- ▼ The Office of the Australian eSafety Commissioner – 9 March 2022; and
- ▼ The Department of Canadian Heritage – 7 March 2022.

The purpose of these meetings was to examine and discuss operational considerations regarding individual complaints mechanisms from the perspective of public bodies, both Irish and non-Irish, and to discuss lessons learned and topical matters.

##### **i. The Data Protection Commission**

The Expert Group met with representatives of the Data Protection Commission on 14 March 2022 in order to discuss the current scope of the Commission's activities and work, in particular in relation to the handling of complaints and its approach to key issues. In this regard, the following was discussed:

- ▼ The process by which the Commission handles different complaints under the General Data Protection Regulation (GDPR) and Data Protection Act, 2018;
- ▼ The volume of complaints received and handled by the Commission in recent years and the resources allocated by the Commission to the handling of them;
- ▼ The various avenues available to the Commission to conclude complaints; and
- ▼ The relationship between the Commission's regulatory role and its complaint handling role, including in terms of resource allocation and feedback between the two systems.

##### **ii. The Office of the Australian eSafety Commissioner**

The Expert Group met with representatives of the Office of the Australian eSafety Commissioner on 9 March 2022 in order to discuss the establishment of the Office, its growth in functions and capacity in recent years and its approach to the handling of complaints made under its various complaints handling schemes. In this regard, the following was discussed:

- ▼ The recent commencement of key elements of the Australian Online Safety Act 2021, including new complaints handling schemes, for example in relation to serious online abuse of adults, and related powers;
- ▼ The thresholds for complaints to be accepted by the eSafety Commissioner under its various complaints handling schemes and the discretion afforded to the Commissioner in terms of accepting and concluding complaints;
- ▼ The practical effect of the complaints handling schemes for complainants, including in relation to timeframes for resolution, and the methods and resources deployed by the Commissioner in this regard;
- ▼ The importance of resolving complaints through informal engagement with service providers and complainants; and
- ▼ The relationship between individual complaints mechanisms and systemic online safety regulation, including in terms of resource allocation, synergies, and the development of a holistic approach to these matters.

### iii. The Department of Canadian Heritage

The Expert Group met with representatives of the Department of Canadian Heritage on 7 March 2022 to discuss the proposed approach of the Government of Canada to online safety regulation, particularly in terms of complaints handling. In this regard, the following was discussed:

- ▼ The results of an extensive public consultation concluded in July 2021, which sought feedback on an online safety regulation proposal by the Department of Canadian Heritage, which included a proposal to establish an individual complaints mechanism operated by a Digital Recourse Council which would operate separately from a systemic online safety regulator in the form of a Digital Safety Commissioner;
- ▼ The intended form and function of the Digital Recourse Council, including the process by which it would handle complaints;
- ▼ The administrative resources necessary to operationalise the Digital Recourse Council;
- ▼ The relationship between individual complaints mechanisms and systemic online safety regulation, including in terms of resource allocation, synergies and fundamental rights; and
- ▼ The decision of the Canadian Government not to pursue the introduction of the Digital Recourse Council at this time but to further examine matters regarding the most appropriate way of legislating for online safety.



## 4: Issues and recommendations

Arising from consideration of its terms of reference, the Expert Group has identified a number of potential regulatory options to which to apply the evaluation criteria listed in the previous Chapter:

- a. No individual complaints mechanism; rely on systemic regulation.
- b. Individual complaints scheme with scope incrementally expanded (“Australia model”).
- c. Individual complaints scheme phased in over time.
- d. Individual complaints mechanism phased in over time with scope incrementally expanded.
- e. “Big bang”: Individual complaints scheme to cover full range of categories of harmful online content from day 1.

The key difference between Regulatory Options B and C is that, in Option B, the individual complaints mechanism would begin by dealing with the most urgent category of online harms covered by the Bill, as decided by An Coimisiún, and, having gained experience of dealing with that category, would gradually expand to cover the rest. In Option C, An Coimisiún would deal with all categories of online harms from the inception of the individual complaints mechanism, but that mechanism would not come into force until after systemic regulation of online platforms, including codes of practice governing their own internal complaints handling systems, had operated for some time. Option D is a combination of both of these.

The purpose of this Chapter is to examine the issues emerging from these regulatory options and to identify recommendations arising from this examination. These will then be synthesised in a consideration of the regulatory options against the evaluation criteria in Appendix 5.

### a. Is an individual complaints mechanism practicable?

The core of this issue is whether an individual complaints mechanism whereby members of the public may complain about individual items of content that they suspect may be harmful online content can be effectively implemented in practice. While it is clear that, in principle, an individual complaints mechanism is both possible to introduce and desirable to have in place, there are concerns that the practical requirements of such a mechanism would frustrate its effective functioning and potentially have unintended consequences for the systemic regulatory framework for online safety in the Online Safety and Media Regulation Bill.

While a number of these practical matters are examined in greater detail in other parts of this Chapter, the general question of practicability is examined here.

#### i. What we heard

In our public consultation, we asked (Q6) how issues of scale and volume of content could be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Service Directive and would therefore be available to users throughout the EU, not just in Ireland.

Respondents to the public consultation generally felt that an individual complaints mechanism was not only desirable, it was feasible if the platforms’ own complaint handling systems were efficient and effective. Several pointed to the need for a timely, robust and thorough complaints handling system as the first line of defence, so as to minimise the number of cases which fall to be dealt with by the individual complaints mechanism and confine it to the most complex or serious cases only. One respondent felt that an individual complaints mechanism with a very broad scope (covering all forms of harm mentioned in the Online Safety and Media Regulation Bill and available to all EU service users) could be unworkable in practice, and recommended exploring mechanisms for rendering the scope manageable, including potentially restricting it to Irish residents only, if legally permissible. Another pointed to the need for the body implementing the individual complaints mechanism to have resources available commensurate with its scope. Some respondents felt that, if the individual complaints scheme extended EU-wide, the costs should be met by EU funds or by a levy on industry.

The Expert Group also noted the very useful information provided by the Data Protection Commission, the Office of the Australian eSafety Commissioner and the Department of Canadian Heritage, in particular regarding the relationship between individual complaints mechanisms and systemic regulation, and the resource issues involved.

## ii. Analysis of regulatory options

The Expert Group felt that Option A (no individual complaints mechanism), while obviously feasible, did not meet the needs of service users in relation to complaints about harmful online content. Option E (individual complaints scheme to cover full range of categories of harmful online content from Day 1) was problematic in that it would be impossible to fully estimate the demand for the scheme, and hence the resource requirement, unless and until the complaint handling schemes of providers of designated online services had been subject to rules set out in online safety codes for long enough to generate meaningful statistics.

The group also felt that there was a reputational risk for any individual complaints mechanism if unrealistic expectations were raised, and that the likelihood of success would be increased by taking an incremental approach. Therefore options B, C and D should be taken forward for more detailed examination.

## iii. Recommendations

1. Provision be made within the Online Safety and Media Regulation Bill 2022 for an individual complaints mechanism along the lines of the provision outlined in **Appendix 2**, subject to necessary legal adjustments by the Office of Parliamentary Counsel, to be implemented on a phased basis by Coimisiún na Meán, and in line with the phasing set out in the recommended approach to implementation below.

## b. Who should operate the individual complaints mechanism?

The Online Safety and Media Regulation Bill 2022 provides that a new regulatory framework for online platforms should be overseen by Coimisiún na Meán (“An Coimisiún”). In our public consultation, we asked whether an individual complaints mechanism should be overseen through a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b) by a second Online Safety Commissioner appointed to carry out this function, or c) by a separate public body to An Coimisiún.

### i. What we heard

Most respondents to the public consultation who expressed a view told us that the individual complaints mechanism should be overseen by An Coimisiún, and within that group most felt that it should be overseen by the same Online Safety Commissioner who is responsible for overseeing the systemic regulatory framework. One respondent felt that, given the scale of the tasks, it might be preferable to have a second Online Safety Commissioner to oversee the functions of the individual complaints mechanism including the management of any legal challenges that might arise from its decision. Another suggested that guidance feedback could be provided to this body through a separate body such as a Social Media Council.

The Expert Group also noted the points raised in its meetings with the Data Protection Commission, the Department of Canadian Heritage and the Office of the eSafety Commissioner of Australia on the relationship between individual complaints mechanisms and systemic regulation, including in terms of resource allocation, synergies and fundamental rights.

### ii. Analysis of regulatory options

Regulatory options B, C and D are all similar in respect of this issue. The Expert Group agrees with the respondents who expressed a view that An Coimisiún is the most appropriate “home” for the individual complaints mechanism. It is acutely aware of the necessity for systemic regulation and the individual complaints mechanism to operate in tandem with, and to inform, each other.

Given the concerns expressed in section 4(a), above, about the difficulty of assessing *ex ante* the likely demand for, and resource requirements of, such a scheme, the Expert Group is strongly of the view that resources (both human and capital) for the two should be accounted for separately, so that, for instance, an unforeseen surge in the number of complaints does not draw resources away from systemic regulation, and vice versa. At the same time, it feels that the exact form of this separation (i.e. whether there should be a separate Online Safety Commissioner to operate the complaints mechanism) is an operational matter and should be left to the Oireachtas and An Coimisiún to decide.

### iii. Recommendations

2. The operation of the individual complaints mechanism be overseen by Coimisiún na Meán but be structurally separated from the operation of the systemic online safety regulation functions. This could be done either a) appointing a second and separate Online Safety Commissioner to the Online Safety Commissioner who will be responsible for the systemic online safety regulation, or b) the Online Safety Commissioner overseeing a specific functional area for the individual complaints mechanism led by a Director.

## c. What should the scope of the individual complaints mechanism in terms of content be?

In our public consultation, we asked which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism. We also asked whether a distinction should be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content.

### i. What we heard

The responses to these questions varied widely, depending on the particular area of concern of the respondent. Some felt that all categories identified in the Bill should be covered, others that An Coimisiún should follow the model of the Australian eSafety Commissioner in terms of which categories were included and excluded. One respondent felt that it would be impractical and unrealistic to consider all categories of harmful online content presently within the scope of the Bill, and that an incremental approach to the scope it considers should be adopted, giving the individual complaints mechanism a degree of focus and creating a strong evidence base to determine whether it was appropriate or practical for the individual complaints mechanism to be extended to other categories of harmful online content. Another felt that it should be possible for new classes of harmful online content to be identified, though the Expert Group notes that this is provided for in the Bill.

Several respondents argued that categories of harmful online content that are or may be connected with a criminal activity that is or may be criminal activity should be distinguished from other categories of harmful online content. Some felt that such content should be totally outside the scope of an individual complaints mechanism, others that a protocol should be developed between An Coimisiún and An Garda Síochána to ensure the effective and swift removal of offence-specific material. Another felt that there was no need for such a distinction, as regulatory bodies such as the Central Bank of Ireland could carry out investigations without the need for involvement by An Garda Síochána.

The Expert Group also noted the points raised in the Expert Group meetings, in particular regarding the incremental expansion of the powers and functions of the Office of the Australian e-Safety Commissioner.

### ii. Analysis of regulatory options

For the reasons of practicability outlined in response to point (a), above, the Expert Group feels strongly that an incremental approach in terms of content is desirable, though with a particular focus on children. Such an approach is consistent with the specific emphasis given to protection of children in the revised Audiovisual Media Services Directive, the General Data Protection Regulation and the Digital Services Act. Both the systemic regulation of online platforms, and the proposed individual complaints mechanism, are new departures and must be given time to take effect. An incremental approach to the introduction of the individual complaint mechanism is therefore prudent and proportionate. The Expert Group believes

that An Coimisiún will be best placed to decide, on the basis of the information available to it through its role in systemic regulation, how it will incrementally scale up the individual complaints mechanism's coverage of the categories of harmful online content. This is subject to the caveat that whichever option is chosen, the needs of children should be prioritised in the first instance. We therefore feel that Options B and D are preferable.

The Expert Group is of the view that, while it may become necessary over time to specify new categories of harmful online content, this is a matter for An Coimisiún and the Oireachtas and is provided for in the Bill.

In relation to offence-specific categories of harmful online content (i.e. content linked to a criminal offence), the Expert Group is acutely aware of the importance of correct procedure in criminal matters and ensuring that the body that is best placed to address such matters should do so in the first instance. It therefore agrees with the suggestions that An Coimisiún should co-operate with An Garda Síochána in triaging complaints relating to these offence-specific categories of online harms, and would extend such co-operation to other relevant bodies such as Hotline.ie (when dealing with child sex abuse material and non-consensual sharing of intimate images or intimate image abuse).

However, the Expert Group is of the view that An Coimisiún may consider complaints relating to offence-specific content in the event that An Garda Síochána or another relevant body informs An Coimisiún, following the triaging process, that they are not pursuing a complaint relating to offence-specific content which has been referred to them by An Coimisiún.

### iii. Recommendations

3. Coimisiún na Meán be enabled to handle complaints relating to the categories of harmful online content set out in section 44 of the Online Safety and Media Regulation Bill 2022 (inserting section 139A(3) of the Broadcasting Act 2009) which relate to non-offence specific content initially prioritising those complaints regarding online content which pertains to children.
4. Coimisiún na Meán be enabled to triage complaints relating to the offence-specific categories of harmful online content set out in section 45 of the Online Safety and Media Regulation Bill 2022 (inserting Schedule 3 of the Broadcasting Act 2009) in co-operation with An Garda Síochána, Hotline.ie and other relevant bodies
5. In the event that An Garda Síochána or another relevant body under recommendation 4 informs Coimisiún na Meán that they are not pursuing a complaint relating to offence-specific content, An Coimisiún should be enabled to handle the complaint.

## d. What should the scope of the individual complaints mechanism in terms of services be?

In attempting to judge the feasibility of an individual complaints mechanism, the likely volume of complaints was a major consideration for the Expert Group.

In our public consultation, we asked how issues of scale and volume of content can be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Service Directive and would therefore be available to users throughout the EU, not just in Ireland. We also asked:

- ▼ Whether an individual complaints mechanism should be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?
- ▼ What range of designated online services would be subject to the individual complaints mechanism, having regard to the existing powers afforded to An Coimisiún in the Bill regarding the categorisation of services?

### i. What we heard

Respondents acknowledged the importance of the scale issue, and generally felt that it was important that the individual complaints mechanism should operate as a backstop to, and not a substitute for, the complaints handling systems of the platforms themselves. Some pointed to the need for an efficient triage system, including that complainants should first exhaust the complaint handling channels within the online service, although this would require an onus on the service to carry out a robust and thorough investigation within a reasonable time. This would mean that only complex or novel cases came before An Coimisiún. Respondents also pointed to the need for adequate resources within that body. One felt that the extent, if any, to which an individual complaints mechanism would be available to the EU generally could render it unworkable in practice, pointing to the need for an incremental approach.

Another respondent pointed out that the implementation of the General Data Protection Regulation had raised similar issues and that, while difficult, had not been a barrier to determining that a regulatory system is required in order to vindicate rights of individuals. The Expert Group found the expert meeting with representatives of the Data Protection Commission very useful in this regard.

In addition, while there was disagreement among the respondents regarding the precise scope of services which should be covered by an individual complaints mechanism, there was an acknowledgement that the powers of designation and categorisation provided to An Coimisiún within the Bill would be an important factor in operationalising any mechanism.

### ii. Analysis of regulatory options

The Expert Group acknowledges the difficulty in assessing the likely scale of complaints under an individual complaints mechanism, particularly if that mechanism applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Service Directive and thus was available to users throughout the EU, not just in Ireland. It considers, however, that if the principle of an individual complaints mechanism is accepted, Coimisiún na Meán is best placed to decide, based on the information available to it at the time, as to its precise scope and application.

Given that uncertainty, it appears that the best way to control the operation of the individual complaints mechanism and prevent it from swamping An Coimisiún's regulatory functions is by operating it as a Tier 2 mechanism, i.e. by requiring complainants to first exhaust the complaints handling process of the platform operator before approaching An Coimisiún. The individual complaints mechanism, therefore, would deal with cases where either the complainant has received a response from the provider and is unsatisfied with it, or there has been unreasonable delay from the provider. Since this is such a fundamental point, it has been incorporated into each of Regulatory Options B, C and D.

The Expert Group further considers, however, that there may be very rare instances where a complaint is so urgent and serious that it justifies bypassing the thresholds set out above. Accepting a complaint which has not met these thresholds would necessarily be solely at the discretion of An Coimisiún, and it is envisaged that this power would rarely be used.

### iii. Recommendations

6. Complaints may be made to Coimisiún na Meán only where a complainant has first complained to the provider of the designated online service through which the alleged harmful online content is available and where either a) the complainant is unsatisfied with the provider's response or b) an unreasonable period of time has elapsed without a response from the provider.
7. Coimisiún na Meán be given discretion to accept complaints where any of the thresholds set out in recommendation 5 are not met where it considers it appropriate to do so in particularly urgent or serious cases.
8. To facilitate and enable the operation of the individual complaints mechanism within the structure of the Bill, Coimisiún na Meán will create a list of those designated online services that the individual complaints mechanism applies to by creating a category of those designated online services which are a) subject to an online safety code on complaints handling and b) where a complaint may be made under the individual complaints mechanism about alleged harmful online content available through those services.

## e. How should the individual complaints mechanism work?

The Expert Group considered how the individual complaints mechanism should work at an operational level, and in particular the extent of discretion Coimisiún na Meán should have in deciding on its own priorities and procedures. Arising from this consideration were a number of themes and factors, including:

- ▼ How would An Coimisiún handle complaints on a day to day basis and what options should be available to An Coimisiún to ensure the appropriate conclusion of complaints?
- ▼ What are the key matters that An Coimisiún should be required to consider when handling complaints?

### i. What we heard

There were varying degrees of engagement by respondents regarding how the individual complaints mechanism should work at an operational level. However, there was an emerging acknowledgement of a number of key points.

Firstly, while respondents primarily focused on situations where the conclusion of a complaint would be the issuance of a content limitation notice by An Coimisiún, there was acknowledgement of the importance of An Coimisiún having multiple ways of concluding a complaint available to it and discretion in which option it chooses to pursue in respect of any particular complaint in order to avoid inefficiencies and potentially undesirable outcomes for complainants. In particular, the Office of the Australian eSafety Commissioner stressed the importance of not relying exclusively on “hard” powers such as removal orders but the importance of providing for the resolution of complaints through engagement with service providers and complainants, including through the provision of advice and guidance and signposting to relevant services.

It was also noted by a number of respondents that, as with other complaints handling bodies, An Coimisiún should be afforded the discretion to dismiss complaints in particular circumstances, including where the content complained about is not harmful online content or where the complaint is frivolous or vexatious.

Secondly, a number of respondents highlighted that there were key principles that An Coimisiún should be required to have regard to when handling complaints. These included the fundamental rights of all relevant parties, the rights of the child, the desirability of concluding complaints swiftly, and the desirability, proportionality and effectiveness of any outcome.

### ii. Analysis of regulatory options

In relation to the regulatory options, the Expert Group acknowledges that many of these operational matters could sit comfortably under options B, C, D or E, although the “big bang” approach of option E may not sit well with some of the operational discretion which the group believes would need to be afforded to An Coimisiún.

In this regard, and with particular heed to the legal requirement for any legislative provisions underpinning an individual complaints mechanism to contain sufficient principles and policies to inform the operation of any scheme, the Expert Group considers that such legislation would need to a) set out at a high level certain requirements such as the range of ways in which An Coimisiún may conclude a complaint and b) afford An Coimisiún discretion in the manner in which it operationalises these requirements.

The Expert Group believes that it is especially important that any underpinning legislative provisions are sufficiently clear regarding the boundaries within which and the avenues through which An Coimisiún can operationalise an individual complaints mechanism.

### iii. Recommendations

9. Coimisiún na Meán be empowered to handle and conclude complaints in the manner it deems most appropriate, including by a) issuing a content limitation notice, b) engaging with providers of designated online services to the extent possible in order to achieve a positive resolution, including by remitting a complaint back to the service provider, c) engaging with An Garda Síochána and other relevant bodies in order to triage complaints if necessary, d) grouping complaints, or e) providing advice or support to a complainant, including by signposting relevant services.
10. Coimisiún na Meán also be given the power to dismiss a complaint a) by determining that the online content subject to the complaint is not harmful online content, or b) where the complaint is frivolous or vexatious.
11. When handling complaints, Coimisiún na Meán be required to have regard to a set of principles, including regarding the rights of all relevant parties, the rights of the child as set out in the United Nations Convention on the Rights of the Child, the desirability of concluding complaints swiftly, and the desirability, proportionality and effectiveness of any outcome.
12. Coimisiún na Meán periodically publish information regarding its receipt and handling of complaints, including the outcomes of complaints and relevant case studies.

## f. How should the individual complaints mechanism be implemented?

This question drives towards the issue of how an individual complaints mechanism would be put into place rather than what the mechanism would ultimately look like in practice. There are a number of matters relating to practice and principle that the Expert Group considered in this regard, including the desirability of An Coimisiún inputting into the timing of the introduction of elements of the individual complaints mechanism.

### i. What we heard

While respondents to the public consultation did not provide much information regarding the manner in which they would like to see an individual complaints mechanism be put into place, many of the points raised in response to the question of how the success or otherwise of an individual complaints mechanism would be measured were relevant to this point. In this regard, respondents raised a number of issues, including:

- ▼ The desirability of ensuring satisfactory resolutions;
- ▼ The timeliness of the operation of the mechanism and the conclusion of complaints; and
- ▼ Efficiency and cost-effectiveness.

In relation to these issues, a number of respondents also highlighted the need for the individual complaints mechanism to evolve based on metrics and statistical analyses of its operation.

From the above, it is clear that the majority of respondents do not expect the individual complaints mechanism to be fully operational from the outset and also expect it to evolve over time. In this regard, the Expert Group discussed the merits of the incremental and phased approach to the introduction of the various online safety individual complaint schemes operated by the Office of the Australian eSafety Commissioner.

### ii. Analysis of regulatory options

In terms of the regulatory options, as stated previously the Expert Group considers that Option A is not desirable and that Option E is unlikely to be feasible. In examining the remaining options, the group agrees with the emerging consensus from the respondents to the public consultation that the individual complaints mechanism should evolve over time based on evidence based analysis of its operation.

Having regard to this, the desirability of An Coimisiún inputting into the timing of the introduction of elements of the individual complaints mechanism and to the resourcing implications set out in the next section, the expert group considers that it would be desirable for the implementation of the individual complaints mechanism to have phased and incremental elements built into it. It will be particularly

important for the success of an individual complaints mechanism for the mechanism to build upon the systemic regulation of complaints handling systems operated by designated online services. In that regard, it will not be possible for the individual complaints mechanism to come into effect immediately upon the enactment of the Bill or the establishment of Coimisiún na Meán.

However, the Expert Group considers that work on the implementation of the individual complaints mechanism should begin in earnest following the establishment of Coimisiún na Meán and that a framework, including timelines, should be set out in legislation in this regard, along the lines set out in Option D. This should include a requirement for An Coimisiún to a) develop an online safety code regarding standards in complaint handling for designated online services, b) monitor the application of the code over a period of at least 12 months, c) following that 12 months, develop a scheme to accept complaints about alleged harmful online content which relates to one or more of the non-offence-specific categories of harmful online content pertaining to children, and d) develop and publish a work plan for how it will progressively work towards operating the individual complaints mechanism in full.

Given that a) the implementation of the individual complaints mechanism will take time and b) there is a need for elements of the mechanism to get up and running as soon as possible, the Expert Group believes that it is important to focus on the most vulnerable class of persons affected by harmful online content, i.e. children. As such, it is desirable that the initial implementation of the individual complaints mechanism by Coimisiún na Meán focus on the non-offence-specific categories of harmful online content as they pertain to children.

### iii. Recommendations

Separate to the recommendations regarding the functioning of the individual complaints mechanism, the Expert Group recommends that the legislation and the regulator should set out a path for the individual complaints mechanism to be introduced on a phased basis, as follows:

1. Following its establishment, Coimisiún na Meán should develop one or more online safety codes regarding standards in complaints handling for designated online services under Section 44 (inserting section 139K into the Broadcasting Act 2009) of the Bill.
2. Coimisiún na Meán should monitor compliance with the online safety codes on complaints handling and its impact over a period of at least 12 months, in order to build up the data required to (a) assess which categories of harmful online content most urgently need to be further tackled via an individual complaints mechanism and (b) quantify the scale of the task involved.
3. Coimisiún na Meán, following the period of 12 months set out in point 2, should as an initial step develop a scheme, under the legislative provision for the individual complaints mechanism, to accept complaints about alleged harmful online content which a) relates to one or more of the non-offence-specific categories of harmful online content and b) where the online content in question pertains to a child.
4. Coimisiún na Meán should, following the period of 12 months set out in point 2, develop and publish a 3 year work plan for how it will progressively work towards operating the individual complaints mechanism in full, including indicative timelines for the commencement of further schemes and resourcing requirements.

The general thrust of this recommended approach to implementation should be contained in the legislation. However, it is important that Coimisiún na Meán has discretion regarding the details of its work plan and its priorities, including the order in which it develops further schemes.

## g. What are the resourcing implications of the individual complaints mechanism?

As set out in the terms of reference of the Expert Group, the resource implications of the individual complaints mechanism are an important consideration in terms of the viability of such a mechanism and the feasibility of any proposed approach to establishing one.

In this regard, on foot of its considerations above the Expert Group has undertaken an analysis of the potential staff numbers and resourcing costs of the full implementation of an individual complaints mechanism, using methodology outlined in the Public Spending Code for the latter. The methodology and outputs of this analysis can be found at **Appendix 4**. From this analysis, the most probable staff requirement, including administrative costs, would be between 153 and 612 staff, and €12.5 million and €49.8 million in resourcing costs. However, it must be emphasised that the higher range of estimated staff numbers and resourcing costs is unlikely to occur if the recommendations and recommended approach to implementation set out by the Expert Group above are put into effect.

It was not possible to fully quantify other costs at this stage, particularly those which may have an external element such as research, auditing, marketing and communications.

### i. What we heard

There was general agreement among stakeholders that it is important that any variation of an individual complaints mechanism should be sufficiently resourced in order for it be successful and sustainable. In particular, and as noted in point (a), above, some respondents felt that, if the individual complaints scheme extended EU-wide, the costs should be met by EU funds or by a levy on industry. In this regard, the Expert Group notes that the Bill already provides that Coimisiún na Meán may levy regulated services, including designated online services, to fund the operation of its functions.

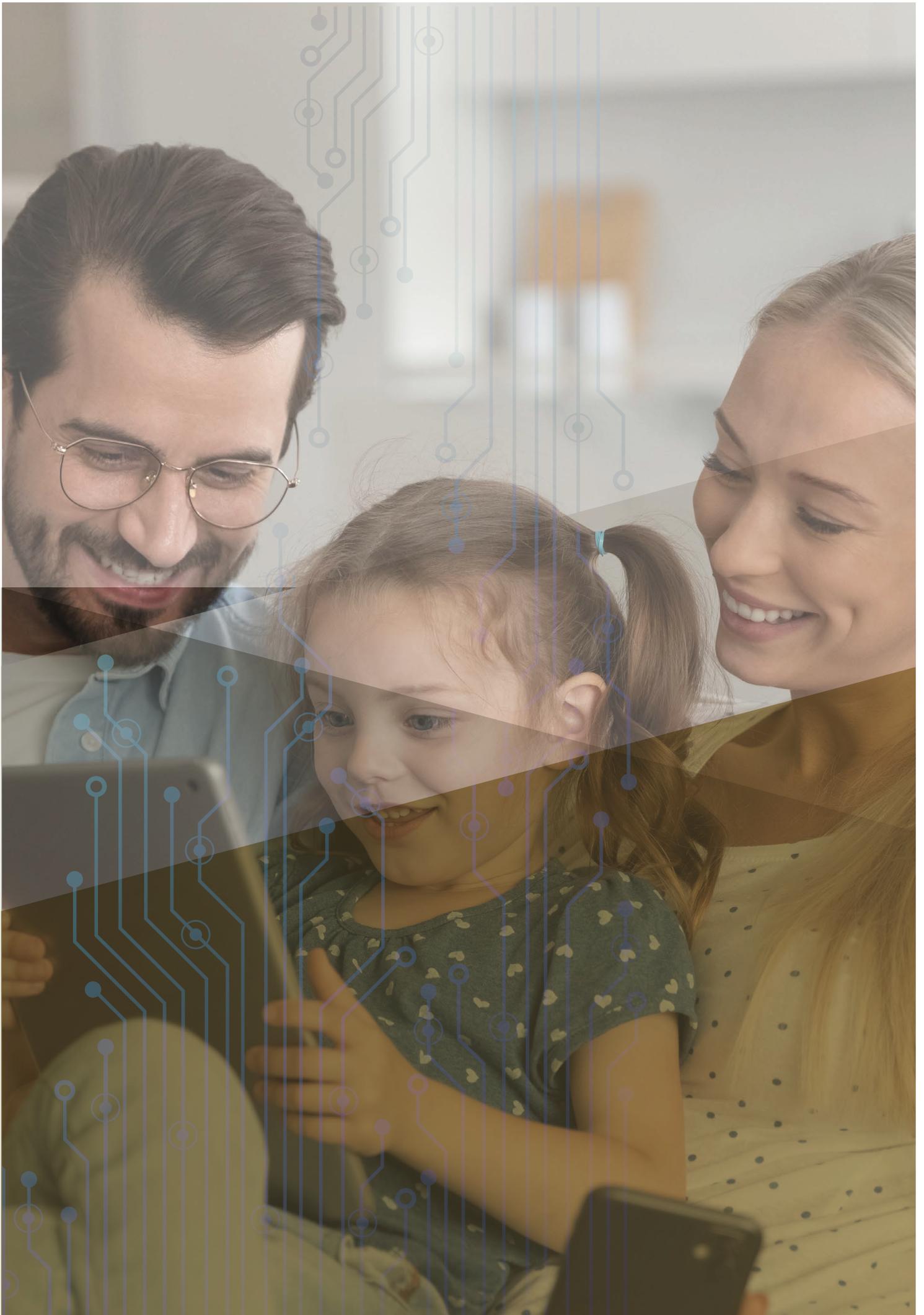
### ii. Analysis of regulatory options

In relation to the regulatory options, the Expert Group notes that the potential range in the staffing requirements and resources that would need to be devoted to the operation of the individual complaints mechanism reinforces the benefits identified above to a phased and incremental approach to the implementation of the mechanism. In particular, the approach outlined under Option D would enable An Coimisiún to input into and manage the allocation of staffing and resources to different elements of the individual complaints mechanism as they are brought into force.

### iii. Recommendations

The Expert Group is satisfied that the recommended approach to implementation outlined above aligns with a) its analysis at Appendix 4 of the potential staffing and resource requirements for the individual complaints mechanism, and b) the desirability of Coimisiún na Meán inputting into and managing the allocation of staffing and resources to different elements of the individual complaints mechanism as they are implemented by An Coimisiún over time.

However, the Expert Group would emphasise that resourcing will need to be made available at the earliest stage to An Coimisiún in order to prepare for and begin to implement the individual complaints mechanism.



## 5: Conclusions

In light of the above considerations, the Expert Group recommends the adoption of Option D as expressed through the recommendations of the group arrived at above and the recommended approach to implementation. Appendix 5 sets out a high-level summary of the regulatory options vis-à-vis the evaluation criteria.

### a. Dependencies

In addition to the recommendations above, the Expert Group considers that there are a number of dependencies arising from the Expert Group's consideration of the regulatory options. In this regard, the Group would underline that the individual complaints mechanism will not have its full or intended effect unless and until:

1. Coimisiún na Meán sets out robust standards in complaints handling for designated online services in the relevant online safety codes applicable to the category of designated online services subject to the individual complaints mechanism.
2. Coimisiún na Meán ensures alignment between the standards in complaints handling set out in online safety codes and the relevant provisions on the internal complaints handling systems of providers of online platforms in the Digital Services Act.
3. Coimisiún na Meán is provided with sufficient time a) to develop online safety codes for complaints handling, and b) for these codes to have been in place for a period of time such that An Coimisiún can gather sufficient information about their impact and review their operation before an individual complaints mechanism is introduced. This is essential in order for it to be able to (a) assess the areas where the further safeguard of an individual complaints mechanism is most urgently needed and (b) further quantify the scale and nature of resources required to successfully implement such a mechanism.
4. Coimisiún na Meán is afforded the discretion to handle and conclude complaints in the manner it deems most appropriate and is not unduly compelled or statutorily proscribed towards certain courses of action in the Bill.
5. Coimisiún na Meán builds strong relationships with designated online services so that complaints may be concluded to the extent possible without recourse to An Coimisiún's formal powers.
6. Coimisiún na Meán builds strong relationships with An Garda Síochána, Hotline.ie, the Data Protection Commission and other relevant bodies in order to appropriately triage complaints as they are received to ensure that they are dealt with by the most appropriate body.
7. Coimisiún na Meán is provided with a robust legal basis for transferring or copying complaints to other bodies as part of the triage process.
8. Coimisiún na Meán is provided with the appropriate level of financial and human resources (including specialist resources) in order to operate the individual complaints mechanism, including by recourse to the industry levy established by section 7 of the Online Safety and Media Regulation Bill 2022 (inserting section 21 of the Broadcasting Act 2009), or other sources of funding as appropriate and sustainable. These resources must be accounted for separately to those allocated to setting up and implementing systemic regulation in order to prevent the stretching of resources.
9. Coimisiún na Meán robustly exercises its functions in relation to education, public awareness and guidance, focusing on co-operation with existing educational bodies such as the Department of Education, Webwise.ie and the National Council for Curriculum and Assessment, building upon existing initiatives such as the Media Literacy Ireland Network and engaging with the European Commission's Better Internet for Kids Strategy.

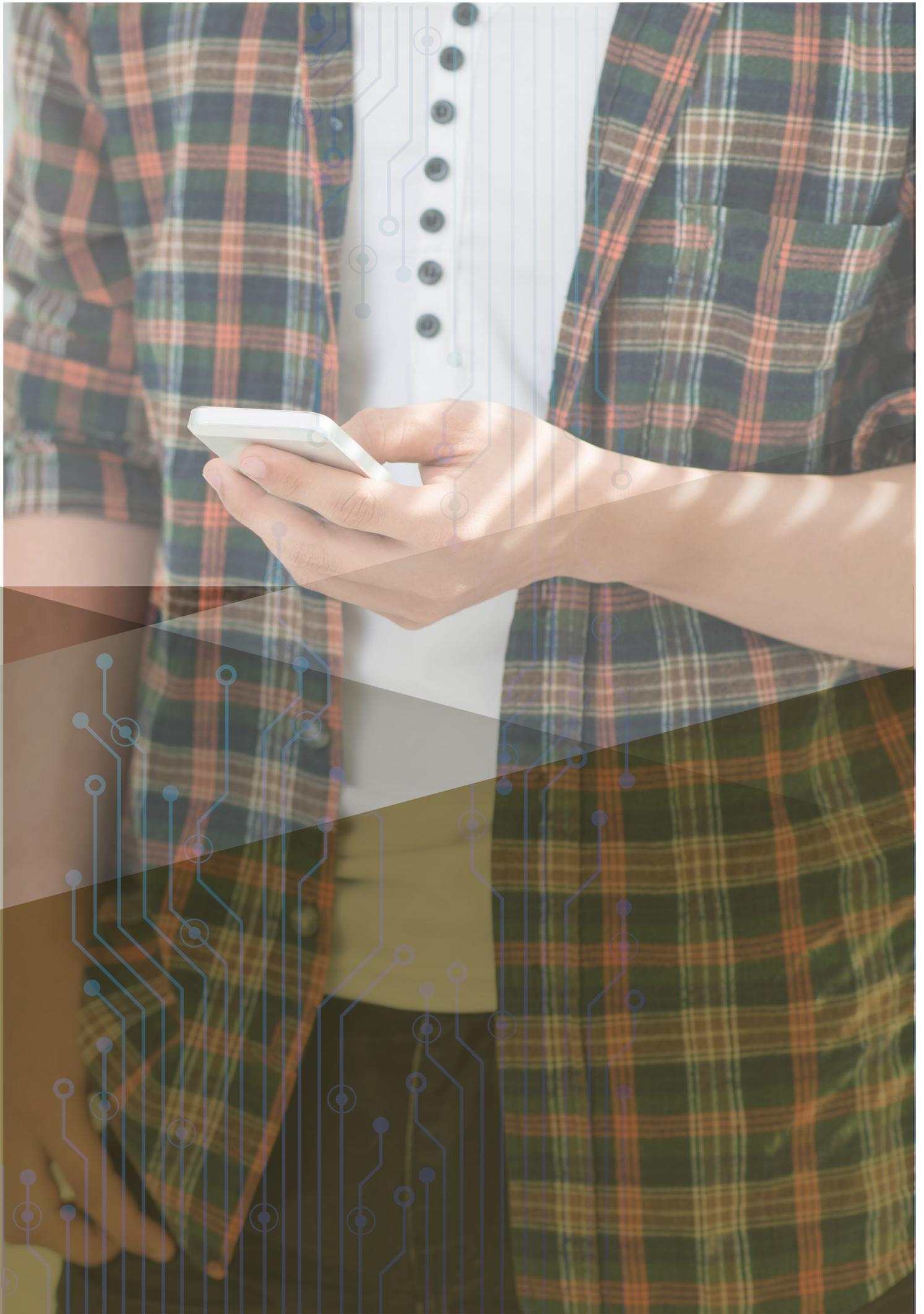
We emphasise that these dependencies are not simply supplementary or complementary to our recommendations and recommended approach to implementation but are, in fact, crucial to their implementation and to the success of the individual complaints mechanism.

## **b. Concluding remarks**

The Expert Group has arrived at these recommendations through detailed consideration of the issues arising from its terms of reference and with regard to the feedback from its consultations. There are a number of key factors which have informed these recommendations and which should be kept in mind in relation to the implementation and operation of the individual complaint mechanism, including:

1. The desirability of an individual complaints mechanism, particularly as a last port of call for the vulnerable, including children, who can be most affected by harmful online content;
2. The value of the regulatory framework for online safety in the Online Safety and Media Regulation Bill in providing for systemic regulation of how designated online services operate, which has the potential to radically reduce the availability of harmful online content and the resulting harm such content can cause; and
3. The real practical challenges in providing for a complaint based system for dealing with individual pieces of potentially harmful online content, including in relation to the relationship with systemic regulation, matters of jurisdiction and cost.

The Expert Group strongly believes that the recommendations in this report chart a balanced way forward which seeks to realise the benefits of an individual complaints mechanism and to harness the synergies between systemic regulation and individual complaints in order to both mitigate practical challenges and enhance the effectiveness of both strands of regulatory intervention.



# Appendix 1

## Membership of the Expert Group

- ▼ Chair: Isolde Goggin, former Chairperson of the Competition and Consumer Protection Commission;
- ▼ Brian O'Neill, independent academic expert on online safety for children and Deputy Chair of the National Advisory Council for Online Safety;
- ▼ Ana Niculescu, CEO of Hotline.ie;
- ▼ Ronan Lupton, Senior Counsel;
- ▼ Baroness Kidron, children's rights advocate, Chair of 5Rights Foundation; and
- ▼ Peter Tyndall, former Ombudsman, Information Commissioner, and Commissioner for Environmental Information.

## Appendix 2

### Proposed draft amendments to Online Safety and Media Regulation Bill

#### Chapter X – Individual complaints scheme

##### Section 1 – Scheme to receive complaints regarding harmful online content which is not offence-specific

- (1) The Commission shall make one or more schemes under which a person (a “complainant”) may complain to the Commission about harmful online content available through a designated online service where the online content is not offence-specific within the meaning of section 139A.
- (2) The scheme shall at least provide for the following:
  - (a) the manner in which complaints may be made;
  - (b) the process which the Commission will follow in order to conclude its handling of a complaint;
  - (c) the process by which the Commission shall ensure the right of uploaders of online content and providers of designated online services to be heard;
  - (d) the process by which the Commission shall inform a complainant of action taken by the Commission as a result of a complaint.
- (3) Before making a scheme, the Commission shall consult—
  - (a) any advisory committee it has established for that purpose under section 19, and
  - (b) any other person the Commission thinks appropriate.
- (4) As soon as practicable after making a scheme, the Commission shall give a copy to the Minister.
- (5) If the Minister makes a request in writing to the Commission to review a scheme, the Commission shall carry out the review and give the Minister a report on the review in writing within a reasonable time.
- (6) The Commission may at any time amend or replace a scheme.
- (7) Subsections (4) and (5) apply to the amendment or replacement of a scheme as they apply to the making of a scheme.
- (8) A scheme and any amendment of a scheme shall be laid by the Commission before each House of the Oireachtas as soon as may be after it is made.

##### Section 2 – Making a complaint

- (1) A scheme made under this Chapter shall provide that complaints shall contain at least the following:
  - (a) a statement regarding the category of harmful online content under section 139A that the complainant considers the online content to fall within and why;
  - (b) sufficient information regarding the location of the online content available through the designated online service to enable its identification, for example a uniform resource locator;
  - (c) evidence that the complainant has brought the online content to the attention of the designated online service through which it is available; and
  - (d) evidence of the complainant having engaged with any complaints or like process operated by the designated online service.

### Section 3 – Complaints handling

- (1) The Commission shall handle complaints made under a scheme made under this Chapter to the extent that the Commission considers appropriate.
- (2) In handling complaints, the Commission shall endeavour to conclude a complaint with one or more of the outcomes set out in section 6.
- (3) The Commission shall not handle a complaint where the online content subject to the complaint is alleged to fall within an offence-specific category of harmful online content within the meaning of section 139A except to:
  - (a) bring the online content to the attention of the Garda Síochána or another relevant body;
  - (b) inform the provider of the designated online services that it has done so; and
  - (c) inform the complainant that it has done so.
- (4) The Commission may handle a complaint where the online content subject to the complaint is alleged to fall within an offence-specific category of harmful online content within the meaning of section 139A where:
  - (a) The Commission has done the actions specified in subsection 3; and
  - (b) The Garda Síochána or another relevant body have determined not to process the complaint.
- (5) Nothing in this section shall be construed as preventing the Commission from issuing a notice under Chapter 7 of Part 8B of this Act.

### Section 4 – Limitations on complaints handling

- (1) The Commission shall not handle a complaint where:
  - (a) the complainant has not brought the online content to the attention of the designated online service through which it is available;
  - (b) the complainant has not engaged with any complaints or like process operated by the designated online service; and
  - (c) where less than 48 hours has elapsed since the online content was brought to the attention of the designated online service through which it is available.
- (2) The Commission may handle a complaint where any or all of the thresholds under subsection 1 have not been met where the Commission believes it is appropriate to do so, having regard to the matters set out under section 5.

### Section 5 – Principles for complaints handling

- (1) In handling complaints, the Commission shall have regard to:
  - (a) the rights of the complainant, the uploader of the content and the provider and users of the designated online service;
  - (b) where the online content does not pertain to a complainant, the rights of persons to whom the content may pertain;
  - (c) where the complainant, the uploader of the content or the person to whom the online content may pertain is a child, the best interests of the child;
  - (d) levels of risk of harm, and in particular harm to children, from the availability of the online content or exposure to it;
  - (e) the desirability of concluding complaints swiftly; and
  - (f) the desirability, proportionality and effectiveness of any outcome.

## Section 6 – Outcomes

- (1) The Commission may conclude a complaint in one or more of the following ways:
  - (a) by determining that the online content subject to a complaint is not harmful online content within the meaning of section 139A;
  - (b) by issuing a content limitation notice in accordance with Chapter 7 of Part 8B of this Act;
  - (c) by engaging with the provider of the designated online service through which the online content is available, including by requiring the provider to re-examine the complaint;
  - (d) by, where the Commission suspects the online content relates to an offence, bringing the online content to the attention of the Garda Síochána;
  - (e) by, where the Commission believes that the online content relates to the activities of another body, bringing that content to the attention of that body;
  - (f) by grouping a complaint with one or more other complaints;
  - (g) by determining that the complaint is frivolous or vexatious; or
  - (h) by providing advice, guidance or support to a complainant.

## Section 7 – Publication

- (1) The Commission shall [periodically] publish the following on a website maintained by it:
  - (a) the number of complaints it has received;
  - (b) the number of complaints it has handled;
  - (c) a breakdown of the categories of harmful online content subject to complaints;
  - (d) a breakdown of outcomes of complaints; and
  - (e) relevant case studies.

## Section 8 – Implementation

- (1) The Commission shall make one or more online safety codes under section 139K regarding the handling by providers of designated online services of complaints regarding the availability of harmful online content.
- (2) Where the codes developed by the Commission under subsection 1 has been in application for at least a year, the Commission shall make one or more schemes under this Chapter under which a complainant may complain to the Commission about harmful online content available through a designated online service where that online content:
  - (a) is alleged to fall within subsection 3 of section 139A; and
  - (b) where the online content pertains to a child.
- (3) The Commission shall, at least a year after the application of the code developed by the Commission under subsection 1, publish a plan for how it intends to give effect to this Chapter within 3 years.
- (4) As soon as practicable after making a plan under subsection 3, the Commission shall give a copy to the Minister.
- (5) The Commission shall, not less than 5 years from its commencement, review the operation of this Chapter.
- (6) Following a review under subsection 5, the Commission shall give the Minister a report on the review in writing within a reasonable time

## Appendix 3

### Respondents to the public consultation

- ▼ Advertising Standards Authority for Ireland
- ▼ American Chamber of Commerce Ireland
- ▼ Broadcasting Authority of Ireland
- ▼ CaliberAI
- ▼ Children's Rights Alliance
- ▼ Cybersafe Kids
- ▼ DCU Anti-Bullying Centre, UCD Centre for Digital Policy, ISPCC (Joint)
- ▼ Dublin Rape Crisis Centre
- ▼ Extern Problem Gambling
- ▼ IAB Ireland
- ▼ Irish Society for the Prevention of Cruelty to Children (ISPCC)
- ▼ The Law Society of Ireland
- ▼ Member of the Public
- ▼ Meta
- ▼ The Ombudsman for Children
- ▼ Rape Crisis Network Ireland
- ▼ RTÉ
- ▼ Technology Ireland
- ▼ Twitter
- ▼ Women's Aid

## Appendix 4

### Summary of resourcing needs

#### Methodology

The method of calculation for the resources required for staffing an individual complaints mechanism operated by Coimisiún na Meán is outlined below. It is important to note that the calculation relies on some reasonable assumptions in relation to the platform data, the number of complaints and the amount of complaints processed per staff member. More specific data would be required to perform more detailed analysis or reach any further conclusions.

Firstly, the Expert Group obtained data from major online platforms in relation to reported content and the subsequent appeals of content moderation decisions. With this data and publicly available data, it was possible to calculate the approximate number of appeals for 2021 on each platform. This methodology was applied to complaints in Ireland and across the European Union.

Subsequently, the data was adjusted to account for:

- ▼ The fact that the categories of content reported to the major online platforms are much broader and do not directly associate with the definitions of harmful online content;
- ▼ The effectiveness of the platforms' complaints handling processes; and,
- ▼ The drop off of complaints between a platform's complaints handling process and any individual complaints scheme operated by Coimisiún na Meán.

Following this adjustment, it was possible to calculate the potential annual scale of complaints in Ireland and across the EU. Data was then analysed from comparable complaints handling processes such as the Australian eSafety Commissioner and the Data Protection Commission. Using this information, the average number of complaints that each staff member handles annually was calculated. Consequently, it is possible to estimate the volume of staff required to deal with the expected level of complaints (**see tables below**).

Finally, the cost of each staff member is determined in accordance with the methodology required by the Department of Public Expenditure and Reform in accordance with the Public Spending Code.<sup>3</sup> Consequently, the potential cost of staffing an individual complaints mechanism can be obtained (**see tables below**).

#### Analysis

Regarding the estimated staff numbers and resourcing costs below, the Expert Group would emphasise the following:

- ▼ That these figures are best estimates and that further work will need to be undertaken by Coimisiún na Meán regarding staff numbers and resourcing;
- ▼ That these figures represent estimated staff numbers and resourcing costs for a fully operational individual complaints mechanism and that the Expert Group's recommended approach to implementation foresees an incremental approach to the operationalisation of the individual complaints mechanism; and
- ▼ That the importance of systemic regulation in minimising the staff numbers and resourcing needed to be dedicated to the individual complaints mechanism, as stressed by the Expert Group in the dependencies, recommendations and recommended approach to implementation.

Further to the last point above, the ranges in the tables below are colour coded according to the probability that the Expert Group assigns to their likelihood, with those in green being within a range of 70-100% probability (high), those in amber being with a range of 35-70% (medium) probability and those in red being in a range of 0-35% probability (low).

<sup>3</sup> Department of Public Expenditure and Reform (2021), [Central Technical References and Economic Appraisal Parameters](#).

## Output

### Definitions

**Drop-off rate:** The level of disengagement by a complainant between making a complaint to a provider of a designated online service and making a complaint under the individual complaints mechanism

**Effectiveness:** The level of satisfactory resolution achieved by a provider of a designated online service once a complaint is made to them, where highly effective is a resolution level of 85%, effective is a resolution level of 70%, somewhat effective is a resolution level of 50%, and ineffective is a resolution level of 30%.

### Estimated Staff Numbers

	Highly Effective	Effective	Somewhat Effective	Ineffective
65% Drop off	1,071	2,143	3,572	5,000
80% Drop off	612	1,225	2,041	2,857
95% Drop off	153	306	510	714

### Estimated Resources Required<sup>4</sup>

	Highly Effective	Effective	Somewhat Effective	Ineffective
65% Drop off	€87.2m	€174.4m	€290.7m	€407m
80% Drop off	€49.8m	€99.7m	€166.1m	€232.6m
95% Drop off	€12.5m	€24.9m	€41.5m	€58.1m

<sup>4</sup> Staff costs are based on (i) direct salary, (ii) employer PRSI and (iii) the cost of overheads and administrative expenses associated with each staff member. The costs do not incorporate pension costs. The costings are based on extant Civil Service grades and salaries.

## Appendix 5

### Summary of regulatory options and evaluation criteria

Option	A: No individual complaints mechanism; rely on systemic regulation	B: Individual complaints scheme with scope incrementally expanded (“Australia model”)	C: Individual complaints scheme phased in over time	D: Individual complaints mechanism phased in over time with scope incrementally expanded	E: “Big bang”: individual complaints scheme to cover full range of harms from Day 1
<b>Characteristics:</b>					
Form	No change to current draft of OSMR Bill	Second-tier individual complaints system (but with scope to act as first-tier in exceptional cases)	Second-tier individual complaints system brought in after new regulatory system has bedded in (but with scope to act as first-tier in exceptional cases)	Second-tier individual complaints system brought in after new regulatory system has bedded in (but with scope to act as first-tier in exceptional cases)	Second-tier individual complaints system (but with scope to act as first-tier in exceptional cases)
Administrative organisation		Hosted within Media Commission but with separation of regulatory and complaint handling functions	Hosted within Media Commission but with separation of regulatory and complaint handling functions	Hosted within Media Commission but with separation of regulatory and complaint handling functions	Hosted within Media Commission but with separation of regulatory and complaint handling functions
Scope of content		Categories of harmful (but not illegal) online content enumerated under OSMR, excluding offence-specific; begin with most urgent category as determined by Media Commission and gradually expand;	Categories of harmful (but not illegal) online content enumerated under OSMR, excluding offence-specific	Categories of harmful (but not illegal) online content enumerated under OSMR, excluding offence-specific; begin with most urgent category, as it pertains to children, as determined by Media Commission and gradually expand;	Categories of harmful (but not illegal) online content enumerated under OSMR, excluding offence-specific
Scope of services		All designated online services covered by a specific code on complaints handling (and identified by the Commission as being covered by the individual complaints mechanism).	Eventually, all designated online services covered by a specific code on complaints handling (and identified by the Commission as being covered by the individual complaints mechanism).	Eventually, all designated online services covered by a specific code on complaints handling (and identified by the Commission as being covered by the individual complaints mechanism).	All designated online services

Option	A: No individual complaints mechanism; rely on systemic regulation	B: Individual complaints scheme with scope incrementally expanded (“Australia model”)	C: Individual complaints scheme phased in over time	D: Individual complaints mechanism phased in over time with scope incrementally expanded	E: “Big bang”: individual complaints scheme to cover full range of harms from Day 1
<b>Characteristics:</b>					
Jurisdiction		EU-wide	EU-wide	EU-wide	EU-wide
Who can use the service?		Children/their parent or guardian; other affected parties/their representatives; appellants whose content may have been taken down. Limited to children	Children/their parent or guardian; other affected parties/their representatives; appellants whose content may have been taken down	Initially limited to children/their parent or guardian; gradually expanded to other affected parties/their representatives; appellants whose content may have been taken down	Children/their parent/guardian; other affected parties/their representatives; appellants whose content may have been taken down
<b>Evaluation Criteria</b>					
Efficiency and effectiveness	Protects the Media Commission’s systemic regulatory functions against being overwhelmed by volume of complaints Does not provide redress for complainants who are not satisfied with outcome of platforms’ complaint processes Relies on systemic regulation working to protect users Onus is on platforms to make their processes work	Provides a means of addressing most difficult cases Incremental approach Not clear how resource requirements can be predicted/how quickly they can be put in place Phased approach allows MC to build up experience and expertise in one area before expanding into others	Running with codes of practice, reporting and audit requirements first allows root causes of issues to be identified Reports from platforms on the operation of their complaints procedures will allow better prediction of resource requirements and targeting of actions Provides a means of addressing most difficult cases, focusing on emerging issues	Running with codes of practice, reporting and audit requirements first allows root causes of issues to be identified Reports from platforms on the operation of their complaints procedures will allow better prediction of resource requirements and targeting of actions Provides a means of addressing most difficult cases, focusing on emerging issues Incremental approach allows MC to build up experience and expertise in one area before expanding into others	Provides a means of addressing most difficult cases Not clear how resource requirements can be predicted/how quickly they can be put in place

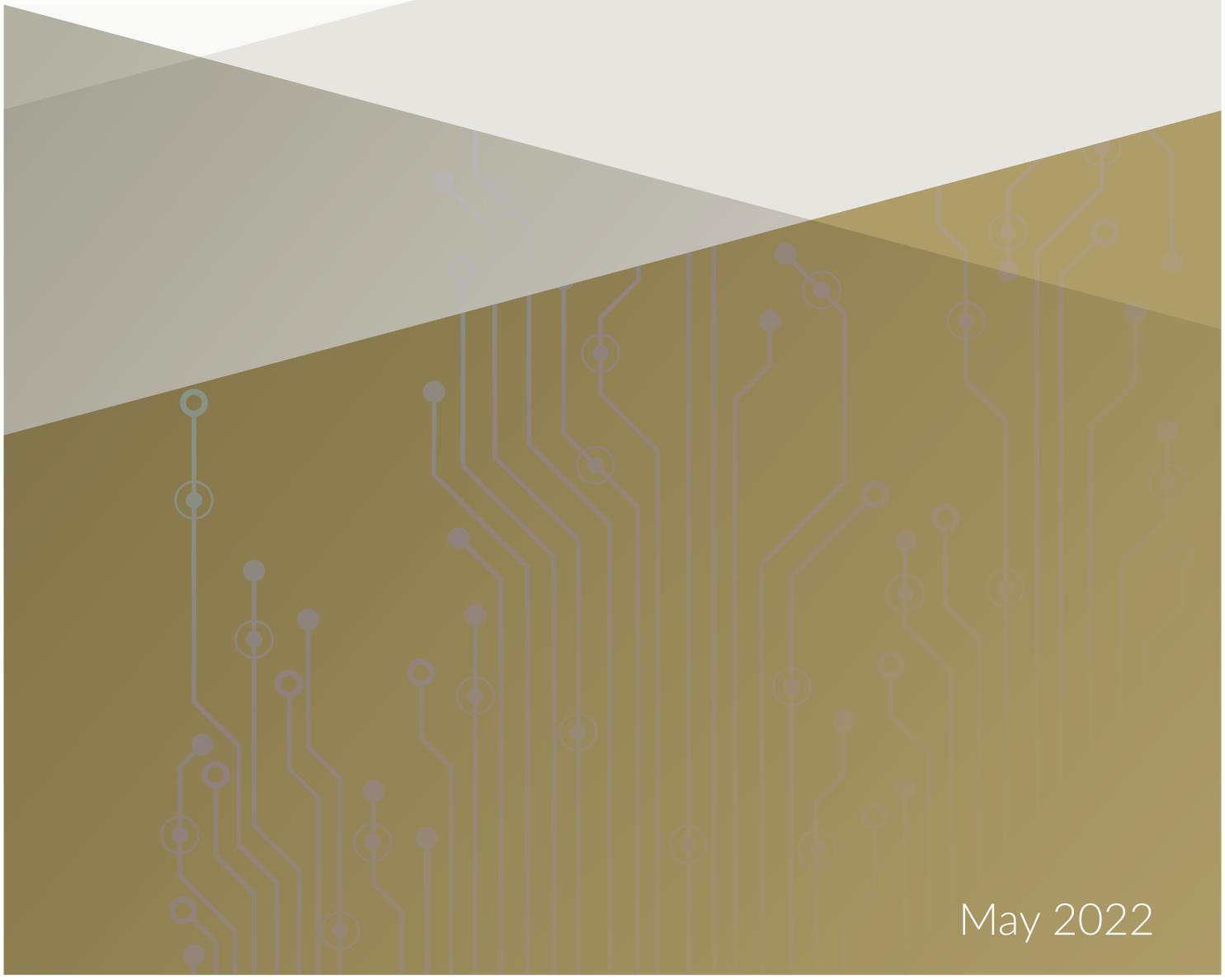
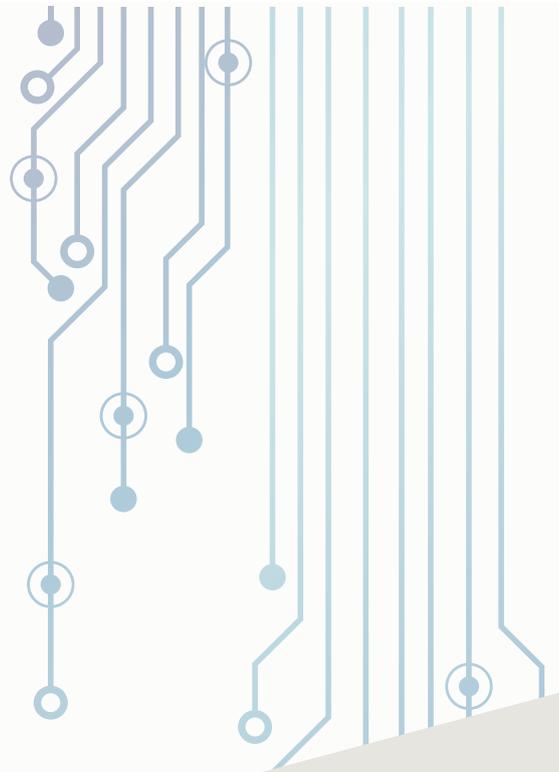
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<b>Evaluation Criteria</b>					
Fairness, equity and human rights	Balance between fundamental rights and due process requirements for complainants, online services and users unchanged from current Bill No specific provision for vulnerable users or children	Can recognise and vindicate rights of child or of other affected parties Not clear how to achieve balance between speed and fairness (due process)	Can recognise and vindicate rights of child or of other affected parties Not clear how to achieve balance between speed and fairness (due process)	Can recognise and vindicate rights of child or of other affected parties Not clear how to achieve balance between speed and fairness (due process)	Can recognise and vindicate rights of child or of other affected parties Not clear how to achieve balance between speed and fairness (due process)
Risk	Risk to the Media Commission (being swamped with complaints, tied up in court by protracted and expensive legal challenge) low Risk to vulnerable users unchanged	Risk to Media Commission of being swamped with complaints, diverted from systemic regulation (depends strongly on effectiveness of companies’ internal compliant handling processes) Risk to users of unrealistic expectations Risk to content providers of being wrongly forced to take down content; possibly “chilling” effect on free speech Risk to users, including vulnerable users and children, of harmful content should decrease	Better information base re volume of complaints to platforms, and their operators, should lower risk to MC of being swamped with complaints Risk to users of unrealistic expectations Risk to content providers of being wrongly forced to take down content; possibly “chilling” effect on free speech Risk to users, including vulnerable users and children, of harmful content should decrease	Better information base re volume of complaints to platforms, and their operators, should lower risk to MC of being swamped with complaints Risk to users of unrealistic expectations Risk to content providers of being wrongly forced to take down content; possibly “chilling” effect on free speech Risk to users, including vulnerable users and children, of harmful content should decrease	Risk to Media Commission of being swamped with complaints, diverted from systemic regulation Risk to users of unrealistic expectations Risk to content providers of being wrongly forced to take down content; possibly “chilling” effect on free speech Risk to users, including vulnerable users and children, of harmful content should decrease

Option	A: No individual complaints mechanism; rely on systemic regulation	B: Individual complaints scheme with scope incrementally expanded (“Australia model”)	C: Individual complaints scheme phased in over time	D: Individual complaints mechanism phased in over time with scope incrementally expanded	E: “Big bang”: individual complaints scheme to cover full range of harms from Day 1
<b>Evaluation Criteria</b>					
Coherence	No change	Evidence from Australian eSafety Commissioner that complaints function can strengthen regulatory function (but this depends on “controllability” of resource demands on complaints function, hence recommendation for a separate function within the MC)	Complaints function should build in information from, and experience with, regulatory function. Same issue re controllability of resource demands arises as with Option B.	Complaints function should build in information from, and experience with, regulatory function. Evidence from Australian eSafety Commissioner that complaints function can strengthen regulatory function (but this depends on “controllability” of resource demands on complaints function, hence recommendation for a separate function within the MC)	Evidence from Australian eSafety Commissioner that complaints function can strengthen regulatory function (but this depends on “controllability” of resource demands on complaints function and possibly argues for a completely separate organisation to handle complaints)
Public acceptance/ reputation	Cases involving vulnerable users failing to achieve redress may lead to perception that harmful activity is left unchecked, with damage to reputation of State and Media Commission	Availability of individual complaints mechanism may provide reassurance to users that their online safety is supported	Availability of individual complaints mechanism may provide reassurance to users that their online safety is supported	Availability of individual complaints mechanism may provide reassurance to users that their online safety is supported	Availability of individual complaints mechanism may provide reassurance to users that their online safety is supported









May 2022