

## **TERMS OF REFERENCE**

### **The Terms of Reference for the Tribunal of Inquiry into certain matters relating to the Complaints Processes in the Defence Forces as passed by resolution of Dáil Éireann on 24th January 2024 and by resolution of Seanad Éireann on 30th January 2024.**

“That Dáil Éireann<sup>1</sup>:

bearing in mind the serious allegations of discrimination, bullying, harassment, sexual harassment and sexual misconduct in the Defence Forces;

noting the decision of Government, in January 2022, to establish an Independent Review Group (IRG) to examine such issues and provide recommendations and guidance to the Minister for Defence on measures and strategies required to underpin a workplace based on dignity, equality, mutual respect, and duty of care for every member of the Defence Forces;

noting that, having completed the IRG review, it is the opinion of the Group, that the establishment of a statutory fact-finding process to identify systemic failures, if any, in the complaints processes in the Defence Forces, represents the only comprehensive method of inquiry to resolve outstanding issues of fundamental public importance;

mindful that the Minister for Defence has consulted with the Attorney General and the observations and comments from key stakeholders have been considered in the development of the terms of reference and the type of inquiry;

noting that:

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<sup>1</sup> In the resolution of Seanad Éireann, the reference is to Seanad Éireann.

— “Abuse” means discrimination, bullying, harassment, physical torture, physical assault, psychological harm, sexual harassment and any form of sexual misconduct (including sexual assault, aggravated sexual assault and rape);

— “Complaints of Abuse” means complaints made by:

- serving or former members of the Defence Forces to the Defence Forces/Minister for Defence;
- current or former civilian employees to the Defence Forces/Minister for Defence; and
- current or former Civil Servants to the Defence Forces/Minister for Defence,

in respect of Abuse suffered by the complainant in the course of his or her training, work and/or career with the Defence Forces, or in the case of Civil Servants and civilian employees, in respect of their interactions with the Defence Forces;

— “Complaints of Hazardous Chemicals” means complaints made by:

- serving or former members of the Defence Forces to the Defence Forces/Minister for Defence;
- current or former civilian employees to the Defence Forces/Minister for Defence; and
- current or former Civil Servants to the Defence Forces/Minister for Defence,

in respect of the use of hazardous chemicals within Air Corps’ headquarters at Casement Aerodrome, Baldonnel.

— “Complaints Processes” includes, but is not limited to, processes covered by:

- A. the Defence Forces Administrative Instruction A7 Chapter 1;
- B. section 114 of the Defence Act 1954 (Redress of Wrongs procedure);
- C. section 169 of the Defence Act 1954 (civil offences punishable by military law);
- D. the Ombudsman (Defence Forces) Act 2004;

E. the Protected Disclosures Act 2014;

F. where applicable, the Protected Disclosures (Amendment) Act 2022; and

G. in so far as (vii) below is concerned, the Safety, Health and Welfare at Work Act 2005 (as amended) or where applicable, the Safety, Health and Welfare At Work Act 1989;

resolves that it is expedient a tribunal be established under the Tribunals of Inquiry (Evidence) Acts 1921 to 2011, to be chaired by Ms. Justice Ann Power, to inquire into the following definite matters of urgent public importance to:

- (i) establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were appropriate and fit for purpose;
- (ii) establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were followed;
- (iii) consider and report on the response and outcome of Complaints of Abuse, and to identify any systemic failures in the Complaints Processes in the Defence Forces;
- (iv) investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of the Complaints of Abuse;
- (v) investigate whether there were:
  - (a) retaliation or reprisals against those who made a Complaint of Abuse;
  - (b) intimidation consequent on the making of a Complaint of Abuse; or
  - (c) the imposition of any penalty or burden upon a person who made a Complaint of Abuse;
- (vi) investigate the nature and performance of the statutory role of the Minister for Defence/Department of Defence in the systems and procedures for dealing with Complaints of Abuse; and
- (vii) investigate the response to Complaints of Hazardous Chemicals and to consider the adequacy of the Complaints Processes in light of the responses to same;

further resolves that:

- (I) the Tribunal of Inquiry:
- (a) is requested to report on its investigation into the matters set out in this resolution and to make any appropriate recommendations arising out of this investigation;
  - (b) shall consider Complaints of Abuse and Complaints of Hazardous Chemicals advanced by serving and former members of the Defence Forces, to include members of the Army Nursing Service, Chaplains to the Defence Forces, civilian employees and Civil Servants working within the Defence Forces and Civil Servants working within the Department of Defence;
  - (c) shall have due regard to any criminal or military prosecution or civil proceedings, currently in train or pending, that may be affected by evidence adduced at the Tribunal of Inquiry;
  - (d) in the context of its investigation into Terms of Reference (i) to (v), may permit evidence of Abuse and the consequences of Abuse to be led, but the Tribunal is precluded from investigating into, or making findings of fact upon any matters that would, if established in a court of law, be criminal in nature;
  - (e) will require appropriate assurances from the Minister for Defence and the Chief of Staff of the Defence Forces that any serving member of the Defence Forces will not be penalised by reason of their disclosure of any Complaint, Complaint of Abuse, or Complaint of Hazardous Chemicals at the Tribunal;
  - (f) may request, in the exercise of its jurisdiction, information pertaining to matters relating to a confidentiality agreement; and in making such request, it is a matter for the Tribunal to determine what (if any) obligations may be imposed in relation to such disclosure;
  - (g) shall have due regard to the independence of any statutory body and/or statutory Office Holders in the performance of their functions;
  - (h) may engage with the interim supports put in place to date by the Minister for Defence, including Raiseaconcern - Confidential Contact Person (CCP), INSPIRE Counselling Service and the Dublin Rape Crisis Centre, as well as the already established Defence Forces Personnel Support Services (PSS),

Defence Forces' psychologist and psychiatrist and medical supports within the Defence Forces Medical Branch;

- (i) is charged with investigating the matters provided for in its Terms of Reference from 1st January, 1983 to the date of its establishment;
  - (j) may examine Complaints of Abuse whether made in respect of matters occurring within the jurisdiction, while serving overseas or on board a State ship or aircraft; and
  - (k) shall endeavour to complete its work no later than three years from the date of its establishment; and in order to achieve this objective, the Tribunal shall be entitled to exercise a discretion in relation to the extent of the evidence that it hears and will be entitled to consider that a sample of evidence on particular issues is sufficient for it to make conclusions and report upon its findings; and the Minister for Defence may at any time request the Sole Member of the Tribunal of Inquiry to provide updates on the progress of the Tribunal;
- (II) the Tribunal shall report to the Taoiseach and make such findings and recommendations as it sees fit in relation to these matters as expeditiously as possible;
- (III) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Tribunal should, as far as it is consistent with the interests of justice, be borne by those individuals;
- (IV) any records made, received or held in the course of the Tribunal of Inquiry shall be subject to the terms of the National Archives Act 1986 and Part 15 of the Civil Law (Miscellaneous Provisions) Act 2011; and
- (V) the Taoiseach shall, upon receipt of any Report from the Tribunal, either apply to the High Court for directions regarding publication of the Report or arrange to have it laid before both houses of the Oireachtas."