

Appendix A

Terms of Reference

Background

The Report of the Independent Review Group (IRG), established to examine issues relating to allegations of discrimination, bullying, harassment, sexual harassment and any form of sexual misconduct in the Defence Forces, recommended the establishment of a statutory fact-finding process to identify systemic failures, if any, in the complaints processes in the Defence Forces.

By resolution, the Houses of the Oireachtas have appointed Ms. Justice Ann Power as Sole Member of a Tribunal of Inquiry pursuant to the provisions of the Tribunals of Inquiry (Evidence) Act, 1921 (as amended) (the “**Tribunal**”) to examine the effectiveness of the complaints processes in the Defence Forces concerning workplace issues relating to discrimination, bullying, harassment, sexual harassment, sexual misconduct and the use of hazardous chemicals.

Definitions

“**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;
- 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;
- 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, Baldonnell.

“**Complaints Processes**” includes but is not limited to processes covered by: (i) the Defence Forces Administrative Instruction A7 Chapter 1; (ii) section 114 of the Defence Act 1954 (Redress of Wrongs procedure); (iii) section 169 of the Defence Act 1954 (civil

offences punishable by military law); (iv) the Ombudsman (Defence Forces) Act 2004; (v) the Protected Disclosures Act 2014; where applicable (vi) the Protected Disclosures (Amendment) Act, 2022, and in so far as Term of Reference (vii) 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.

Terms of Reference

The Terms of Reference for the Tribunal are:

- (i) To establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were appropriate and fit for purpose;
- (ii) To establish whether the Complaints Processes in the Defence Forces in relation to Complaints of Abuse were followed;
- (iii) To consider and report on the response to and outcome of Complaints of Abuse, and to identify any systemic failures in the Complaints Processes in the Defence Forces;
- (iv) To investigate whether Complaints of Abuse were actively deterred or whether there was a culture that discouraged the making of Complaints of Abuse;
- (v) To investigate whether there were reprisals against those who made Complaints of Abuse by way of retaliation, by intimidation consequent on the making of a Complaint of Abuse or by the imposition of any penalty or burden upon a person who made a Complaint of Abuse;
- (vi) To 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;
- (vii) To investigate the response to Complaints of Hazardous Chemicals and to consider the adequacy of the Complaints Processes in light of the responses to same.

Other

- (a) The Tribunal is requested to report on its investigation into the matters set out in the Terms of Reference above and to make any appropriate recommendations arising out of this investigation;
- (b) The Tribunal 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) The Tribunal 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;
- (d) In the context of its investigation into Terms of Reference (i) to (v), the Tribunal 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) The Tribunal 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, Complaints of Abuse, or Complaint of Hazardous Chemicals at the Tribunal;
- (f) In the exercise of its jurisdiction, the Tribunal may request information pertaining to matters relating to a confidentiality agreement. 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) The Tribunal shall have due regard to the independence of any statutory body and/or statutory office holders in the performance of their functions;
- (h) The Tribunal may engage with the interim supports put in place to date by the Minister for Defence, including: Raisea concern - 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) The Tribunal is charged with investigating the matters provided for in its Terms of Reference from 1 January 1983 to the date of its establishment by resolutions of the Houses of the Oireachtas;
- (j) The Tribunal 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;
- (k) The Tribunal shall endeavour to complete its work no later than 3 years from the date of its establishment. 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. The Minister for Defence may at any time request the Sole Member of the Tribunal to provide updates on the progress of the Tribunal;
- (l) 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.