

Explanatory Note

**Proposed Referendum to amend the Constitution to enable the Houses
of the Oireachtas to undertake full inquiries
&
Overview of the Proposed System of Oireachtas Inquiry**

Department of Public Expenditure & Reform

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Preface

This Explanatory Note has been prepared by the Government Reform Unit in the Department of Public Expenditure and Reform to:-

- Explain the proposed wording of the constitutional amendment required to implement a new approach to undertaking parliamentary inquiries; and
- Make available through the publication of a General Scheme of a Bill details of the proposed new Oireachtas system of inquiry.

The note sets out in overall terms the background and context to the proposed referendum by outlining the reasons why, as a result of the Supreme Court judgment in the Maguire vs. Ardagh (“Abbeylara”) case, the need for an amendment to the Constitution is believed to arise.

The note also contains an overview of the proposed structure and operation of the inquiry system as well as the draft Heads of the Houses of the Oireachtas (Powers of Inquiry) Bill 2011.

These new inquiry arrangements for the Oireachtas can only be put in place if the proposed amendment to the Constitution contained in the Referendum Bill – the Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011 - is approved by the electorate in the referendum due to take place on 27 October 2011.

This note draws primarily on the assessment and analysis of the Abbeylara inquiry issue contained in the Fifth Report of the Joint Oireachtas Committee on the Constitution published in January 2011 which reviewed Article 15 of the Constitution and the parliamentary power of inquiry in Ireland.

The drafting of enabling legislation to underpin the constitutional amendment and the implementation of the proposed inquiry system is ongoing, based on the draft Heads published with this note. It is expected – subject to Government approval – that the Bill will be ready for publication by early October at the latest. Enactment of the Bill by the Oireachtas will require the referendum on the proposed amendment of the Constitution on 27 October next to be accepted.

The Department would welcome comments on the draft Heads from interested parties as soon as possible, to inform and advise the finalisation of the Bill over the coming weeks.

1. Introduction

1.1. Referendum Bill

The Thirtieth Amendment of the Constitution (Houses of the Oireachtas Inquiries) Bill 2011 sets out the wording of the proposed Referendum.

The existing Article 15.10^o would be renumbered 15.10.1^o

Three new Subsections would be inserted as follows:-

2^o Each House shall have the power to conduct an inquiry, or an inquiry with the other House, in a manner provided for by law, into any matter stated by the House or Houses concerned to be of general public importance.

3^o In the course of any such inquiry the conduct of any person (whether or not a member of either House) may be investigated and the House or Houses concerned may make findings in respect of the conduct of that person concerning the matter to which the inquiry relates.

4^o It shall be for the House or Houses concerned to determine the appropriate balance between the rights of persons and the public interest for the purposes of ensuring an effective inquiry into any matter to which subsection 2^o applies.

1.2 Purpose of the Referendum

The broader international experience - and the specific national experience in the case of the successful DIRT inquiry carried out by the Dáil Public Accounts Committee - suggests that there are significant public policy benefits from the operation of an effective system of parliamentary inquiry where relevant and comprehensive information is

essential to the performance of the Houses of the Oireachtas whether, for example, in the field of law-making or in holding the Government accountable.

The purpose of the referendum is, therefore, to seek the approval of the electorate for a change in the Constitution which would allow the Houses of the Oireachtas to undertake full parliamentary inquiries as described in this note.

If the proposed amendment to the Constitution is accepted the objective for the new inquiry arrangements is to secure effective and cost-efficient parliamentary scrutiny of issues of general public importance in a manner consistent with precepts of constitutional and natural justice.

2. Parliamentary Inquiries - Abbeylara Judgment

2.1 Programme for Government commitment

The primary objective of the proposed amendment to the Constitution, consistent with the commitment contained in the Programme for Government, is to address the issues raised by the Supreme Court in its judgment in the Abbeylara case.

This is intended to ensure that the Oireachtas is empowered to carry out the type of inquiries which are considered integral to the effective performance of the Houses of the Oireachtas' legislative responsibilities and to the Dail's functions in exercising oversight and securing accountability in respect of the system of public administration, as well as its appropriate role in making recommendations to Government on significant issues of public policy.

2.2 Supreme Court Judgement in Abbeylara Case – Key findings

The April 2002 Supreme Court Abbeylara judgment identified significant limitations and constraints on the ability of the Houses of the Oireachtas to undertake inquiries.

Inherency: The key finding of the Court was that the Oireachtas did not have an inherent power to conduct inquiries. It had, therefore, overstepped its legal jurisdiction when it instituted the type of inquiry involved in the Abbeylara case.

The Supreme Court found that, although the Oireachtas could legitimately sanction other bodies and tribunals to investigate matters of public importance on its behalf, the Oireachtas itself has limited inherent investigative authority.

While there were some important procedural failings in the approach adopted by the inquiry committee carrying out the Abbeylara inquiry, the major issue arising from the judgment was the significant limitations on the power of the Oireachtas to hold parliamentary inquiries into matters involving alleged personal culpability of individual

citizens for wrongdoing, resulting in findings potentially damaging to their good name and reputation.

Bias: The Supreme Court judgment also highlighted the importance of ensuring that an Oireachtas inquiry conformed to the important principle in natural and constitutional justice of ‘no bias’.

The operation of this principle can arise in two specific contexts - institutional (or structural) bias and objective (or individual) bias.

In the *Abbeylara* case, on the question of *objective bias*, the Supreme Court found that it was not compatible with constitutional justice for a person to sit in a quasi-judicial capacity as a member of a committee making determinations of fact and, at the same time, make comments in the media which indicated that they had strong prior views or had already formed fixed opinions regarding the matters into which they were inquiring. Such an approach was incompatible with a fair and balanced hearing and assessment of the evidence being presented to the inquiry.

Strong and robust procedures and protocols for the conduct of inquiries will need, therefore, to be put in place by each House of the Oireachtas under the proposed new approach in order to safeguard the inquiry process against the risk of objective bias evidenced in, for example, public comments of committee members reported in the media.

Institutional bias refers, in summary, to a situation where, irrespective of the circumstance of a particular case, it is argued that a specific body may, of its nature, be inherently biased and cannot, therefore, be relied upon to assess evidence and form judgments in an objective and unbiased fashion.

The majority of Supreme Court judges rejected the assertion in the *Abbeylara* case that an inquiry by the Oireachtas must, by its very nature, be biased. In this context the current

very significant constitutional role assigned to the Houses of the Oireachtas in relation to the impeachment of the President or judges might make a finding of structural or institutional bias difficult to justify.

However, the absence of a specific and explicit recognition in the Constitution of a role for the Oireachtas in undertaking inquiries in which findings of personal culpability might be made could provide grounds for legal challenge to Oireachtas inquiries on the basis of institutional bias.

Holding of non-members of the Houses responsible: In the *Abbeylara* case the focus of the investigation was on the behaviour and actions of individual citizens (i.e. members of the Garda Síochána) who were not members of the Oireachtas. The Supreme Court held that this specific aspect of the inquiry was not lawful.

The Court believed that the Oireachtas committee of inquiry had departed from its policy ambit and veered into factual determinations which had no long term policy implications beyond findings of wrongdoing by individuals.

While no definite view was taken by the Supreme Court on the appropriate limits to an Oireachtas inquiry in holding non-office holders responsible, the views of the Court did highlight that existing constitutional provisions did not empower the Oireachtas to inquire into the conduct of any person. This would clearly represent a significant constraint on the ability of the Oireachtas to conduct an inquiry.

Adjudicatory findings of fact: As set out above, one of the concerns of the Supreme Court in the *Abbeylara* case was that the inquiry committee was empowered under its terms of reference to make finding of facts which potentially impacted on the reputation and good name of individuals.

The findings of the inquiry would, therefore, be considered adjudicatory, meaning that although the findings had no legal effect they could impugn the good name and

reputation of an individual and the Court considered this to be incompatible with the current constitutional position.

The implication of the Supreme Court's findings was that under the current constitutional position an Oireachtas inquiry could not investigate any matter which had the potential to impact adversely on a person's good name or reputation, other than perhaps in an inquiry with a clear legislative purpose which might in some circumstances unavoidably lead to implied blame being attached to an individual.

This conclusion by the Supreme Court could potentially seriously curtail the capacity of the Oireachtas to carry out any meaningful inquiries; it would usually be expected to be the case that individual conduct or the conduct of a group of individuals would have played a significant role in giving rise to the set of circumstances requiring the Houses of the Oireachtas to carry out an inquiry in the first instance.

Balancing of rights: Under the Constitution and Ireland's international obligations, the courts and public authorities are obliged to respect principles of basic fairness of procedures and the requirements of natural justice.

The nature and extent of these rights relating to fair procedures are well established in Irish case law. The Supreme Court did not need to address in great detail in the *Abbeylara* case the balancing of rights of witnesses arising under the procedures of any parliamentary inquiry as the Court had found - as set out above - that there was no inherent power to conduct an inquiry of the kind under consideration.

The Supreme Court did, however, state that all normal rules of natural and constitutional justice involving fair procedures would apply to Oireachtas inquiries.

In this context, the Court found that, in considering the balance which must be held between the rights of the Oireachtas and those of the individual citizen, and the priorities

which must be given to each, the right to protection of the individual's good name had to be given due weight.

It is important to note that the Court did hold that what is or is not fair procedures may vary depending on the nature of the matters being investigated. The Court agreed for example that there is no absolute right to cross-examine but that factors such as the significance of the witness to the subject matter of the inquiry and the nature of the evidence of that witness as regards the interests of the party seeking cross-examination rights would have to be considered.

2.3 Necessity for a Constitutional Referendum

The Joint Oireachtas Committee on the Constitution acknowledged in its Fifth Report in January 2011 that some of the legal flaws highlighted in the Supreme Court judgment could be rectified in future inquiries carried out by the Oireachtas by adhering properly to procedural requirements.

However, after extensive consideration and examination of the issues raised in the *Abbeylara* judgment drawing on expert external advice, one of the central recommendations of the Joint Committee was that a constitutional amendment expressly providing for an inherent power of investigation was needed.

The Committee found that the option would be open to the Oireachtas, in the absence of a constitutional amendment, of legislating for a statutory power to inquire. Under this approach the Oireachtas would seek to rectify the defects identified by the Court in the *Abbeylara* judgment by revising existing legislation to provide, for example, for limited powers of inquiry deriving narrowly from the Houses' legislative function or the expenditure oversight function of the Dáil, and a more rigorous adherence to procedures by any inquiry committee. It would, however, be necessary for this legislation to conform to the constraints and limitations relating to the scope of Oireachtas inquiries identified in the *Abbeylara* judgment outlined in this note.

Consequently, a constitutional amendment is considered essential to overcome the core issues identified by the Supreme Court which led it to conclude that the Oireachtas was acting outside its powers under the Constitution in the nature and scope of the Abbeylara Inquiry. A constitutional amendment would ensure that the Oireachtas is not severely restricted in relation to the issues it is permitted to conduct inquiries into and in relation to the scope of these inquiries. It would reduce the risk of successful constitutional challenges to the work of any future Oireachtas inquiry on the grounds that arose in the Abbeylara case, providing there are no procedural defects in the manner in which the committee of inquiry carries out its work.

Oireachtas inquiries into matters of general public importance will inevitably require the inquiry committee to seek to ascertain the facts of a controversial issue as a basis for formulating recommendations consistent with the role and responsibilities of the Houses. In order to achieve this objective it is likely that an Oireachtas committee of inquiry would find it necessary to draw conclusions regarding the behaviour of individuals. Such findings of facts relating to individuals' conduct may often be an essential step for the Houses of the Oireachtas to effectively and successfully discharge an inquiry function. Following the Supreme Court judgment in the Abbeylara case such an approach cannot be put in place under existing constitutional provisions.

3. Wording of the Proposed Constitutional Amendment

3.1 First Subsection of Referendum Wording

The need for an explicit, express and unambiguous statement granting a power of inquiry to the Oireachtas is addressed by the first sentence of the proposed referendum wording:

2° Each House shall have the power to conduct an inquiry, or an inquiry with the other House, in a manner provided for by law, into any matter stated by the House or Houses concerned to be of general public importance.

This wording reflects the finding of the Joint Oireachtas Committee on the Constitution, that a constitutional amendment is required to avoid any doubt that the holding of inquiries into matters of general public importance is within the inherent powers of the Houses of the Oireachtas.

This wording, by making it clear that the Oireachtas can hold inquiries, also minimises the legal risk discussed in Section 2.2 above that the Houses of the Oireachtas might be found by the Courts to be precluded from carrying out such inquiries on the basis of institutional or structural bias (i.e. which is the legal concept that, even irrespective of the circumstances of a particular case, a particular body might on account of its political nature and composition be inherently biased).

While the amendment wording is designed to address the risk that the Houses of the Oireachtas would be prevented from carrying out full inquiries on the basis of institutional bias it does not and cannot discharge the members of an Oireachtas committee of inquiry from the requirement to avoid objective bias. Regardless of any constitutional amendment wording and in line with principles of natural and constitutional justice, members of Oireachtas committees of inquiry would be required to behave impartially in respect of the matters which were the subject of an inquiry.

Separately, the wording provides that the inquiry must be into a matter “*stated by the House or Houses concerned to be of general public importance*”. The overview of the proposed inquiry system contained in this note and the detailed draft Heads of the enabling legislative framework for the inquiry system describe the process which it is proposed should be undertaken and the evidence to be provided to allow the Houses make an assessment that a particular matter is indeed of general public importance and also warrants the establishment of an inquiry.

Finally, this formulation provides that the conduct of the Oireachtas in any such inquiry would be carried out in line with provisions laid down in legislation – such legislation to be enacted subsequent to the passing of the referendum in line with the detailed General Scheme of the Bill. The legislation will provide the framework within which the Houses of the Oireachtas can formulate rules and guidelines governing the conduct of such inquiries.

3.2. Second Subsection of Referendum Wording

This proposed wording seeks to address two of the major concerns identified by the Supreme Court in the *Abbeylara* judgment by granting a power to the Oireachtas to investigate individuals and make findings.

3° In the course of any such inquiry the conduct of any person (whether or not a member of either House) may be investigated and the House or Houses concerned may make findings in respect of the conduct of that person concerning the matter to which the inquiry relates.

This formulation ensures that the Oireachtas could not be inhibited in the performance of any of its functions in relation to powers of inquiry by any likelihood of any civil or criminal liability being inferred from its deliberations. It is important to state that there is no question of the Oireachtas determining through the proposed inquiry system criminal culpability or a finding of civil liability as this would encroach on the constitutionally protected role of the Courts in the administration of justice. This necessity will be

entrenched in the enabling legislation underpinning the proposed constitutional amendment.

However, it is considered essential in order for Oireachtas inquiries to be effective consistent with the role, function and responsibilities of the Oireachtas that it should be possible to investigate individual conduct and, if necessary and consistent with the facts, make findings of for example, individual misconduct, wrongdoing or incompetence with the objective of making and rationalising recommendations for changes, for example, in legislative or regulatory frameworks or the role, structure, governance and management systems of public bodies.

The wording also explicitly provides that an investigation can be carried out into the activities of any person or persons irrespective of whether the subject(s) of an Oireachtas investigation are or are not members of either House, in order to address the issue raised in the Supreme Court judgment regarding the potentially limited scope for parliamentary inquiries.

It will, of course, be critical to seek to ensure through the proposed governing framework established in legislation for the new parliamentary inquiry system, and under the procedures and protocols put in place by the Oireachtas for the conduct of such inquiries, that the ability to conduct or possibly even initiate criminal trials will not be compromised as a result of the undertaking of Oireachtas inquiries.

3.3. Third Subsection of Referendum Wording

As has already been highlighted in this note, a key requirement for the new system of Oireachtas inquiry established under the proposed constitutional amendment will be adherence to the rules of natural justice consistent with constitutional principles and Ireland's obligations under international law.

The Joint Oireachtas Committee on the Constitution stressed in its Fifth Report the requirement in a new inquiry system to balance the exercise of these rights against the

public interest in the facilitation of effective parliamentary investigations. In this regard the Committee's recommendation was that the Houses of the Oireachtas themselves should be assigned the responsibility for deciding how witnesses' rights to fair procedures in the work of committees of inquiries should be exercised in practice. In the absence of this approach it would, in all likelihood, remain a matter for the courts to achieve this in their consideration of legal challenges that might be expected to be mounted to the proceedings of Oireachtas inquiries.

The third sentence of the proposed amendment is designed to meet this recommendation
The proposed wording states that:

4° It shall be for the House or Houses concerned to determine the appropriate balance between the rights of persons and the public interest for the purposes of ensuring an effective inquiry into any matter to which subsection 2° applies.

The wording is intended to establish a constitutional imperative that the Houses of the Oireachtas are empowered to determine how fair procedures will be secured in the proceedings of Oireachtas inquiries.

It is highly desirable that Oireachtas inquiries should be carried out in an efficient and cost-effective manner and conclude their work within a reasonable period of time. It is strongly questionable whether it would be possible to achieve an effective and cost-efficient system of Oireachtas inquiry in circumstances where, for example, the opportunity to cross-examine witnesses using legal counsel was available to all witnesses called to appear before an Oireachtas committee, irrespective of the extent to which their good name may be adversely affected by the findings of the inquiry.

If Oireachtas committees of inquiry were required to provide in all circumstances the full spectrum of rights normally afforded to witnesses in Tribunals of Inquiry, including in particular full rights to cross examine witnesses, the costs and duration of Oireachtas

inquiries are likely to be prohibitive and the inquiry process would be expected, in any event, to be highly ineffective.

Witnesses to Oireachtas inquiries will, of course, have very extensive legal rights. The Irish courts have established in case law very strong legal principles relating to the rights to fair procedures available to individuals in order to defend their good name and reputation. The courts have also recognised that the constitutional rights entitlement of any particular individual will vary depending on the extent to which these rights are believed to be in jeopardy.

The proposed wording would certainly not make it lawful for any parliamentary inquiry to disregard the rights of witnesses to fair procedures. For example, the draft enabling legislation underpinning the constitutional amendment envisages that all of the primary procedural rights previously identified as necessary by the courts to ensure that the rules of natural justice are observed will be available in the proposed new Oireachtas inquiry system. It is intended, however, that it will be a matter for each Oireachtas committee of inquiry under rules agreed by the House(s) to determine how these rights should be afforded to witnesses in any particular instance depending on the specific circumstances that pertain in each individual set of circumstances.

In making its judgment regarding the procedural safeguards available to witnesses, an Oireachtas committee of inquiry would be expected to have regard to factors such as whether specific facts are in dispute between witnesses to the inquiry and the extent to which witnesses are on reputational hazard etc. An overarching concern for an Oireachtas committee of inquiry should be to ensure that the level of rights should be commensurate to the risk to an individual's good name against whom allegations may or have been made.

4. Proposed System of Oireachtas Inquiry

4.1 Overview

This section describes how the proposed new system of Oireachtas inquiry is designed to operate. The draft legislation underpinning the proposed system aims to ensure that Oireachtas inquiries:-

- are held in a manner respecting fair procedures;
- work under well-defined and tightly framed terms of reference;
- are effective and cost-efficient; and
- are carried out in an expeditious fashion

The inquiry process involves a Committee of either House or a Joint Committee which may hold the inquiry, an Oversight Committee which has specific functions in relation to Oireachtas inquiries and an overarching approval role for the House(s) of the Oireachtas.

An Oversight Committee of either House of the Oireachtas and a Joint Oversight Committee of both Houses will be established to perform functions in relation to Oireachtas inquiries. These functions include drawing up terms of reference for the inquiries, making rules relating to the conduct of the inquiries and preparing guidelines on legal costs. The most important function of the Oversight Committee relates to its function in consenting to or refusing its consent to a proposed inquiry.

The House or Houses are central to the inquiry process, having key responsibilities in approving the terms of reference for inquiries, their costs and duration and, in particular for determining that a matter which it is proposed to be inquired into is a matter of general public importance.

They also are required to approve the rules established by the Oversight Committee on the conduct of inquiries including considerations to be taken into account in determining

the appropriate balance between the rights of persons and the public interest in ensuring an effective inquiry.

4.2 Proposal to hold an Inquiry

An Oireachtas Committee¹ (or sub-committee thereof), conferred with a power to send for papers, persons or records, can propose to hold an inquiry in relation to a matter the Committee considers to be of general public importance.

The Oversight Committee, in consultation with the committee that proposed the inquiry, draft the terms of reference for the inquiry, if they agree that an inquiry should take place. Building on the success of the model used in the DIRT Inquiry all inquiries will be underpinned by an investigation and an investigation report to determine the facts relevant to the inquiry. If a relevant investigation has not already been completed the Oversight Committee will include, in the terms of reference for the inquiry, an investigation and the production of an investigation report. If an investigation has been completed prior to the application to the Oversight Committee the terms of reference set may require the appointment of an investigator to produce another report in circumstances that further fact finding is assessed to be required.

To ensure the scope of the investigation is described precisely the terms of reference will specify the events, activities, circumstances, systems, practices or procedures to be investigated. To control costs the Oversight Committee must prepare a statement containing (i) an estimate of the costs (including legal costs) to be incurred in conducting the inquiry and preparing the reports and (ii) a time frame for the submission of the final report by the committee of inquiry.

¹ Other than the Committee of Member's Interests of Dáil Éireann or Seanad Éireann and the Oversight Committee

4.3 Approval by the House

The terms of reference for the inquiry need the approval of the Dáil or Seanad, or both, as appropriate. The Oversight Committee send the inquiry terms of reference, a statement of the reasons for holding an inquiry and the statement on expected costs and timeframe to the House(s). The House(s) if approving the holding of an inquiry also states explicitly that the matter is of general public importance. The terms of reference together with the accompanying statement on investigation costs and timeframe, must be published by the Oversight Committee.

4.4 Amending Inquiry Terms of Reference in light of Investigation Report

As stated above in 4.2 the inquiry may be based on either a pre-existing report or an investigation report produced on foot of the inquiry's terms of reference. When the committee of inquiry receives the final report of an investigation, it, in consultation with the Oversight Committee, will decide if the terms of reference need to be amended. It may be decided at this point that there is no need for the inquiry to progress any further, that the original terms of reference are still appropriate or that they need to be amended. Unless it is decided that the inquiry does not need to progress further then the committee of inquiry will complete the holding of the inquiry in line with the terms of reference.

Inquiry terms of reference can be amended as long as the legal rights of a person that has already co-operated with an inquiry would not be prejudiced. Any amendments to terms of reference of an inquiry must be approved by the House(s), after consideration by the House(s), of whether the amendment has impacted on the definition of the matter as that of general public importance, and any impact on costs and timeframe must be reflected in a revised statement to the House on these issues.

4.5 Conduct of Investigations and Inquiries

Investigations will normally be held in private. The investigator decides who will be present when evidence is heard, who may be legally represented in the interest of fair procedures and whether cross examination of witnesses will be allowed. If considered necessary for the purposes of the investigation, the investigator has powers to enter

premises and to examine and secure documents and information. Private dwellings may only be entered on the authority of a warrant issued by a District Court judge.

Investigators or committees of inquiry can direct any person to attend, to give evidence and to produce any document. If a person does not comply with a direction, the High Court on application from an investigator or committee of inquiry can order the person to comply with the direction. If the person fails to comply with the direction the Court may deal with the matter as if it were a contempt of court. A person who fails to comply with a direction to attend is guilty of an offence. A person who knowingly or recklessly provides false or misleading information that is material to the inquiry shall also be guilty of an offence.

Investigators or committees of inquiry will not take evidence that could prejudice matters before a court, adversely affect the security of the state or prejudice or impair the prevention, detection, investigation or prosecution of offences. The High Court will determine if matters that are before a court would be prejudiced. A declaration in writing can be given by the Secretary to the Government in relation to evidence that could adversely affect the security of the State or prejudice the prevention, investigation or prosecution of an offence.

An investigator or committee of inquiry will disclose the substance of any evidence in its possession to a person, if that person should be aware of it for the purposes of the evidence they may give or have given. The person to whom the evidence is disclosed will be given an opportunity to comment. If a person's good name or conduct is impugned the inquiry may permit a legal representative of that person to cross-examine the relevant witness in relation to that evidence.

Documents given, as directed, to an investigator or committee of inquiry or a statement or admission made are not admissible as evidence against a person in any criminal or other proceedings (except for offences related to the conduct of the inquiry or the offence of

perjury). In addition, any reports or documents issued or prepared by the committee are not admissible in any criminal or other proceedings.

4.6 Inquiry Report

On conclusion of the inquiry a written report will be produced setting out the facts established based on the evidence received. If the facts relating to a particular issue have not been established then the report shall identify the issue and may indicate its opinion as to the quality and weight of any evidence relating to the issue. Information that may be omitted from the report includes information that might prejudice any criminal proceedings that are pending or in progress. If the committee of inquiry in consultation with the Oversight Committee considers that the publication of a report might prejudice criminal proceedings application will be made to the High Court for directions concerning publication. Subject to any directions of the High Court the committee of inquiry will cause the final report to be published as soon as possible.