



**AN BILLE UM BORD MEASÚNAITHE DÍOBHÁLACHA
PEARSANTA 2003
PERSONAL INJURIES ASSESSMENT BOARD BILL 2003**

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose and Scope

The primary purpose of the legislation is to establish the Personal Injuries Assessment Board (PIAB) as a statutory body. The Board will be charged with the making of assessments, without the need for legal proceedings to be brought, of compensation for personal injuries. The role of the PIAB will be confined to claims where legal issues are not disputed by the Respondent and it is accepted that the claim is genuine. PIAB will commence operations early in 2004 with Employers' Liability claims before encompassing Public Liability and motor accidents in mid 2004.

The priority for the PIAB will be to implement fair procedures in accordance with the principles of natural justice as they apply in this "documents only" system of assessment. In the current legal system less than 10% of claims reach a Court trial but these are considered to carry an excessive litigation overhead.

The objective of the PIAB is to assess compensation at current levels but to do so more expediently while eliminating the excessive litigation overhead.

While parties are entitled to seek independent legal advice at any stage, the PIAB will not award litigation costs for or against any party but special provision will be made by PIAB to protect the interests of vulnerable claimants. PIAB will not conduct oral hearings.

Assessment of General Damages for pain and suffering will be based primarily on medical reports from the claimant's treating doctor but in some cases the claimant will be examined by a member of the Independent Medical Panel which is being established by PIAB.

A Book of Quantum will be compiled and published as a guideline to General Damages for various categories of injuries and from which parties can satisfy themselves as to reasonableness of PIAB awards. The existence of this guide should also assist parties in reaching negotiated settlements.

Assessors in the PIAB will calculate allowable Special Damages, for items such as wage losses and medical expenses, on the same basis as the Courts taking into account the pending amendments to

legislation on credit for collateral benefits received and compliance with tax legislation.

From the planned effective date all relevant non-litigation cases, which would currently require the issuing of legal proceedings, will be subject to mandatory referral to PIAB before they can proceed to adversarial litigation. If the case involves legal disputes or reservations about the genuineness of the claim, PIAB will issue an authorisation for the matter to proceed to litigation within a specified timeframe if the claimant wishes to pursue the matter further.

The Minister for Justice, Equality and Law Reform is preparing a Civil Liability and Courts Bill which includes a number of measures to tackle fraudulent and exaggerated claims within the Court system.

At the end of the PIAB process, the parties are entitled to reject the award if they consider that they would secure a more favourable outcome through the Court system.

In contrast to the current adversarial system of personal injury litigation the approach adopted by Assessors in the PIAB will be inquisitorial. This means getting to the true facts of the extent of the allowable claim and to ensure that the claimant gets that to which they are entitled — no more and no less. This approach will be of assistance to claimants on many issues where they might currently seek legal advice even in assessment only'' cases which do not involve legal disputes.

The cost of PIAB will be covered by fees levied on respondents on a case by case basis at a standard minimum rate plus any actual outlay incurred on experts' opinions in more complex cases with copies of reports being supplied to all parties to the claim. Fees will be set with a view to PIAB breaking even financially. Claimants will pay a small (refundable) administrative fee which must accompany their application to PIAB if they have not been able to secure a satisfactory settlement direct i.e. claims will initially be made direct in the usual way against the respondent.

Background

It is widely accepted that litigation costs add, on average, in excess of 40% to the cost of compensation. This has contributed to the high cost of insurance in this country and to the cost of claims against the State.

On 20 March 2001, the Government approved the establishment on a statutory basis of a Personal Injuries Assessment Board (PIAB) and, towards that end, the establishment of an inter-Departmental Implementation Group to progress the establishment of the PIAB with an initial mandate to address personal injuries claims arising from employers' liability insurance.

The Implementation Group was set up in April 2001, comprising representatives of relevant Government Departments. The Group reported in 2002.

In June 2002, a specific commitment given in the Agreed Programme for Government, had the practical effect of re-confirming the Government decision of 20 March 2001 to establish the PIAB.

By eliminating the need for litigation costs where legal issues are not in dispute, the PIAB will significantly reduce the cost of delivering compensation to the benefit of all consumers. The PIAB

will offer a lower cost and speedier means of finalising genuine personal injury claims than the current court based system. The PIAB will also offer speedier assessments to the benefit of genuine claimants.

Provisions

PART 1

Preliminary and General

Section 1 gives the short title of the Bill.

Section 2 provides for the commencement date or dates to be fixed by Ministerial Order.

Section 3 outlines the type of civil actions the legislation will apply to. It is intended that the legislation will initially apply to employer liability claims only but will be extended in due course to cover motor accident, public liability and other types of claims. The PIAB will not deal with cases involving medical negligence nor claims for which a specific statutory scheme has been established, such as the Garda Compensation scheme (*section 4*).

Section 4 provides for the general interpretation of the Act to which the Bill applies. It also provides a number of definitions of terms used in the legislation — these definitions follow those which currently apply to personal injury litigation.

Section 5 provides for the Minister to make regulations on specific issues referred to in the legislation.

Section 6 makes reference to the fact that nothing in the legislation affects legal proceedings brought before the commencement of this section. This section also allows for parties to agree a mutually acceptable settlement at any stage during the PIAB process.

Section 7 provides that nothing in the legislation affects a person's right to seek independent legal advice in respect of a relevant claim.

Section 8 provides for any expenses incurred by the Minister in the administration of the Act to be paid out of moneys provided by the Oireachtas subject to the sanction of the Minister for Finance.

PART 2

Mandatory Assessment Procedures in Respect of Certain Civil Actions

Chapter 1 — Mandatory Applications for Assessment

Section 9 provides for a definition of relevant claim in this Chapter i.e. a civil action to which the act applies.

Section 10 provides this Chapter will specify the procedures to be employed by both claimants and the Board. It also prohibits the bringing of Court proceedings in respect of a claim unless certain conditions are satisfied.

Section 11 provides that applications for assessment will be made in the prescribed form and accompanied by prescribed documents such as a medical report, copies of the original letter of claim and receipts in respect of outlays for which special damages are sought.

Section 12 provides that all personal injury claims not yet the subject of litigation must be referred to the PIAB before proceedings can be commenced.

Section 13 provides for the notification by PIAB of a claimant's application to the respondent and a request as to whether the respondent consents to an assessment being made.

Section 14 provides for the procedures to be followed in response to notification referred to in *section 13*. If the respondent intends to dispute legal issues then the PIAB will issue the claimant with an authorisation which will permit him/her to institute legal proceedings. Otherwise the case will proceed to assessment.

Section 15 provides for cases where there are two or more potential respondents. It allows for one of the respondents to allow the case proceed to assessment without prejudicing any of the respondents in any subsequent proceedings to seek an indemnity or contribution from other parties.

Section 16 provides that a respondent's agreement to a claimant's submission for PIAB assessment shall not constitute an admission of liability nor shall it be used in any other manner to prejudice legal arguments in subsequent Court proceedings.

Section 17 provides for discretion to the PIAB not to proceed with a case where a respondent hasn't paid the fee or a case which is more appropriate to the Courts e.g. new medical conditions upon which there would not be sufficient legal precedent, or it is of a particular complex nature etc.

Section 18 provides that legal capacity (over 18 and of "sound mind") of the claimant and respondent is assumed unless the date of birth or medical evidence provided indicates otherwise.

Chapter 2 — Procedure for Assessment

Section 19 advises that this chapter contains the principal provisions relating to making an assessment of a relevant claim.

Section 20 provides for a definition of what an assessment is, who shall make an assessment, with what expert assistance, and on what basis. An assessment will be made by assessors employed by the PIAB on the same basis as an award of the Courts calculated by reference to the principles which govern the measure of damages in the law of tort and any relevant statutory provisions.

Section 21 provides that assessments will be made by reference to information and documents provided. There will be no oral hearings. Assessments will state the amount to be set aside for each of the dependents of a person fatally injured in an accident. Payments will be made by a single, once-off lump sum as is the current position in the Courts.

Section 22 gives PIAB the power to levy charges. Funding of the PIAB will be primarily on a "case by case fee" payable by the respondent as the most transparent and equitable distribution of costs. Respondents will pay a standard administration fee as well as the costs of experts' fees necessarily incurred by the claimant (e.g. cost of independent medical examination in certain cases). The claimant will also pay a small fee which will be refunded in the event of the acceptance of an award. The Board will have the power to impose such fees.

Section 23 provides that the Board may request such information from the claimant or respondent(s) as is necessary to make an assessment.

Section 24 provides that the Board may initiate an examination by the Independent Medical Panel where the claimant's medical report is not comprehensive or conclusive rather than examinations being solely at the behest of the respondent.

Section 25 provides for how an assessment will proceed if a claimant does not co-operate with the requirements set out in the preceding two sections.

Section 26 provides for the Board having the power to request from other bodies, excluding the Revenue Commissioners, such information that is necessary to properly validate losses claimed as well as benefits received which will be deducted from the assessment. This section also provides for access to the National Vehicle File recording the identity of the vehicle insurer for cases arising from motor accidents.

Section 27 provides that the Board can apply to the Courts to secure information which a party not involved in the claim is failing to provide to support the claimant's case.

Section 28 provides for the Board having limited powers to request from the Revenue Commissioners such information relating to the income of the claimant for the purpose of verifying any item of financial loss that is alleged by the claimant.

Section 29 provides for the Board having a duty of care towards vulnerable parties.

Section 30 provides that the Board will issue details of the assessment to the claimant and respondent and request that they reply within a specified timeframe as to whether they wish to accept the assessment or not.

Section 31 provides for the interpretation of claimant's and respondent's response or non-response to the request outlined in *section 30*. If a claimant neither accepts nor rejects an assessment within a specified period, the claimant will be deemed to have rejected the assessment. If the respondent fails to respond to the assessment within the specified period then the respondent will be deemed to have accepted the assessment.

Section 32 provides that if an assessment is not accepted by either parties then the claimant will be authorised to take proceedings within a specified timeframe if they so wish.

Section 33 provides that the acceptance of the assessment by the parties is binding on them as full finalisation of the claim.

Section 34 provides for a situation where there are multiple respondents and where they do not all accept the assessment.

Section 35 provides that, regardless of acceptance by the parties of the PIAB award, in cases where the claimant does not have full legal capacity then a ruling is required by the Court.

Section 36 provides for cases referred to in *section 35* where the Court does not approve the assessment — the claimant will be authorised to take proceedings within a specified timeframe.

Section 37 provides that nothing in the PIAB process is to prejudice any of the parties in any subsequent litigation.

Section 38 provides that where assessments are accepted the PIAB will issue an order to pay to the respondent.

Chapter 3 — Legal status of order to pay, etc.

Section 39 advises that this chapter specifies the effect an order to pay has.

Section 40 provides for the enforceability of PIAB assessments on the same basis as Court decrees.

Section 41 provides that payments to a claimant on foot of an order to pay constitute a satisfaction of the claimant's relevant claim. Part payments constitute partial satisfaction.

Section 42 enables the injured party to receive the compensation to which they are entitled leaving the apportionment of liability between potential co-defendants to be decided by subsequent litigation or negotiation without prejudice to the right of the respondent(s).

Section 43 provides clarification that the claimant's claim has been fully and reasonably discharged by the participating and accepting respondent without prejudice to that respondent's right in any subsequent litigation.

Section 44 provides for the allowing of expenses to claimant's in certain situations where the Board so directs. An example might be where a complicated medical condition follows an accident and updated medical or other experts' reports are required to reflect the full extent of the claimant's claim in terms of medical prognosis or the extent of financial losses. In such a case the PIAB will direct that such expenses are necessarily incurred and are to be paid by the respondent.

Section 45 provides for cases referred to in *section 30(3)* where a claimant lacks full legal capacity (e.g. a minor) and has somebody acting on their behalf. The expenses necessarily incurred by the person acting on their behalf are to be paid by the respondent.

Section 46 provides that the Board may make rules which will be in separate regulations. These rules will outline some of the detail of the procedural operations of the PIAB.

Section 47 provides for the situation where a claimant may withdraw an application. In such a case a claimant may not make a fresh application or bring proceedings.

Section 48 provides for the PIAB to make assessments on an ad hoc basis for cases where litigation proceedings have commenced following the joint application for assessment by both parties.

Section 49 provides for the making of assessments by PIAB within specific time limits.

Section 50 provides that the period from the date of application to PIAB and ending six months from the date of issue of authorisation to commence proceedings will be disregarded for the purposes of the statute of limitations period.

Section 51 provides that PIAB assessments shall not be admissible

in any subsequent proceedings unless the proceedings concerned are in connection with the enforcement of any assessment that is being accepted.

PART 3

Personal Injuries Assessment Board

Chapter 1 — Establishment and Principal Functions of the Board

Section 52 provides that the Minister shall appoint a day to be the establishment day for the purposes of the Act.

Section 53 provides for the establishment of the PIAB which subject to the provisions of the Act will be independent in the performance of its functions.

Section 54 provides for the functions of the PIAB including making assessments of relevant claims and preparing a Book of Quantum.

Section 55 provides that the Minister with the consent of the Minister for Finance may confer additional functions on the Board.

Chapter 2 — Composition of the Board

Section 56 provides for the membership of the Board. The Board will consist of no more than 11 members including the chairperson and the chief executive. The non-executive members of the Board will be appointed by the Minister and will represent the Irish Congress of Trade Unions, the Irish Business and Employers Confederation and the Irish Insurance Federation or their successors in title. In addition the Director of Consumer Affairs, the Consumer Director of the Irish Financial Services Regulatory Authority and other members with appropriate expertise will sit on the Board. Board members will be paid such fees as determined by the Minister with the consent of the Minister for Finance.

Section 57 provides for matters relating to membership of the Board e.g. resignation, removal, disqualification, appointment, re-appointment.

Section 58 provides for the appointment, by the Minister, of a chairperson of the Board and matters relating to that appointment.

Section 59 provides for the appointment, by the Minister, of a vice-chairperson of the Board and matters relating to that appointment.

Chapter 3 — Committees and Meetings

Section 60 provides for the holding of Board meetings and the conduct of business at such meetings.

Section 61 provides that the Board may establish committees to assist and advise the Board and also to perform such functions as the Board may delegate.

Section 62 provides for matters relating to the operation of committees referred to in *section 61*.

Chapter 4 — Chief Executive Officer

Section 63 provides for the appointment of a CEO, functions of the CEO and terms and conditions in relation to the appointment of CEO.

Section 64 provides for the answerability of the CEO to the Board, and the power of the CEO to delegate functions to staff.

Section 65 provides for the accountability of the CEO to the Public Accounts Committee.

Section 66 provides for the accountability of the CEO to other Oireachtas Committees.

Chapter 5 — Staff of Board and Superannuation Matters

Section 67 provides for the appointment of staff to the PIAB. Staffing numbers, grades and remuneration will be determined in consultation with the Minister for Finance.

Section 68 provides for setting up of a superannuation scheme in consultation with the Minister for Finance.

Chapter 6 — Supplemental provisions with regard to Board's administration and management

Section 69 provides for indemnification from actions and claims arising out of members of the Board or staff of the PIAB carrying out their functions.

Section 70 provides conditions for staff of PIAB in relation to membership of the Dáil or Seanad.

Section 71 provides for the disclosure of interests by members of the Board and staff of PIAB.

Section 72 further provides for disclosure as referred to in *section 71* and also provides for matters in relation to such disclosure or non-disclosure.

Section 73 provides that members of the Board, or staff or consultants engaged by the Board shall not disclose confidential information without consent of the Board.

Chapter 7 — Financial provisions

Section 74 provides that the Minister, subject to the sanction of the Minister for Finance, may make a grant to the Board to cover the expenditure incurred by the Board in the performance of its functions.

Section 75 provides that the Board may borrow for current expenditure purposes. This power to borrow is subject to the consent of the Minister and the Minister for Finance.

Section 76 provides that the chief executive of the Board will keep accounts of the Board's income and expenditure and submit estimates of same as required by the Minister.

Section 77 provides for examination of the accounts and records of the Board by any person appointed by the Minister in respect of any financial year and the Board shall pay such fee as fixed by the Minister.

Section 78 provides that the Board shall as soon as practicable after it commences operating, and thereafter within 6 months before each fifth anniversary of it starting, shall submit to the Minister, a strategic plan for the following 5 years. The plan shall comprise the key objectives, output and related strategies, including use of resources of the Board.

PART 4

Miscellaneous

Section 79 provides for the service of notices or documents to any person under the Act.

Section 80 provides that the Board may engage consultants or advisers as it considers necessary for the performance of its functions.

Section 81 provides that a person guilty of an offence under the Act shall be liable to penalties.

Section 82 provides that a member of staff of the Board who is a lawyer may appear on behalf of the Board in an application under *section 27* or *35*.

Financial Implications

The cost of PIAB will be covered by fees levied on respondents on a case by case basis at a standard minimum rate plus any actual outlay incurred on experts' opinions in more complex cases. Fees will be set with a view to PIAB breaking even financially. Claimants will pay a small (refundable) administrative fee.

The annual running costs for PIAB when fully operational were estimated at between €7m and €8m in the report of the Implementation Group set up to progress the establishment of PIAB.

Exchequer funding will be required to cover the establishment costs of PIAB (estimated at €2m in Implementation Group report). Cash short falls in the initial period of operation will be covered by Exchequer funding until PIAB starts to break even financially. Exchequer funding requirements will be agreed in consultation with the Minister for Enterprise, Trade and Employment and the Minister for Finance in the context of the annual estimates process.

*An Roinn Fiontar, Trádála agus Fostaíochta.
Samhain, 2003.*