



DÁIL ÉIREANN

AN BILLE FÁN MBINSE UM CERVICALCHECK, 2019 CERVICALCHECK TRIBUNAL BILL 2019

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

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AN BILLE FÁN mBINSE UM CERVICALCHECK, 2019 —AN TUARASCÁIL

CERVICALCHECK TRIBUNAL BILL 2019 —REPORT

Leasuithe Amendments

1. In page 6, between lines 16 and 17, to insert the following:

““establishment day” shall be construed in accordance with *section 4*.”

—An tAire Sláinte.

2. In page 6, line 31, after “concerned,” to insert the following:

“where that woman agreed to participating in the Review of Cervical Screening up to 3 months after the commencement of this Act.”

—Stephen S. Donnelly.

3. In page 7, to delete lines 3 and 4 and substitute the following:

“(iii) whose cytology slides were re-examined, whether as part of the retrospective CervicalCheck cytology clinical audit or otherwise, and”.

—Alan Kelly.

4. In page 7, between lines 7 and 8, to insert the following:

“(v) notwithstanding the above, any woman who had a screening history through CervicalCheck, and whose diagnosis of cervical cancer was notified to CervicalCheck, may apply to the Chair of the Tribunal who may consider if their application should proceed;”.

—Brid Smith.

5. In page 10, line 18, to delete “audit.” and substitute the following:

“audit, or

(c) seeking damages under both *paragraphs (a) and (b)*.”.

—Alan Kelly.

6. In page 11, line 3, to delete “on,” where it secondly occurs, and substitute “6 months from”.

—An tAire Sláinte.

7. In page 11, line 9, to delete “on”, where it secondly occurs, and substitute “6 months from”.

—An tAire Sláinte.

8. In page 12, between lines 35 and 36, to insert the following:

- “(3) (a) Notwithstanding *subsection (2)*, the Tribunal shall assess and make any award for general or special damages on the basis of a single lump sum award or a provisional award as chosen by a claimant under this *subsection*.
- (b) Where the Tribunal is of the view that there is a possibility that a claimant, as a result of the wrong by reference to which an award falls to be made, may suffer particular serious consequences in the future, the Tribunal may make an award (“provisional award”) calculated in accordance with *subsection (2)* but assessed on the assumption that such serious consequences will not occur, identifying those consequences and specifying the period within which the claimant may apply in the event of such occurring.
- (c) Where the consequences referred to in *paragraph (b)* do occur, the claimant may apply for a further award, in accordance with the terms of the provisional award.
- (d) A claimant shall choose, on making a claim to the Tribunal, whether she or he is seeking a single lump sum award or a provisional award. A claimant may, at the discretion of the Tribunal, alter her or his choice up to the commencement of the hearing of her or his claim.”.

—Alan Kelly.

9. In page 12, between lines 35 and 36, to insert the following:

- “(3) The Tribunal shall be entitled to award aggravated damages in circumstances where the Tribunal determines—
- (a) that a claimant has been cross-examined in an unnecessarily aggressive and/or adversarial manner by a respondent, or
- (b) that the respondent advanced a defence that it knew or ought reasonably to have known was not justified by the evidence available to that respondent.”.

—Stephen S. Donnelly.

10. In page 13, line 9, to delete “and shall be accompanied by a waiver”.

—Brid Smith.

11. In page 13, between lines 20 and 21, to insert the following:

- “(7) Notwithstanding the above—
- (a) a claimant shall choose, on making a claim to the Tribunal, whether she or he is seeking a single lump sum award or a provisional award. A claimant may, at the discretion of the Tribunal, alter her or his choice up to the commencement of the hearing of her or his claim,
- (b) where the Tribunal is of the view that there is a possibility, but no more than a possibility, that a claimant, as a result of failures in the CervicalCheck screening

system may suffer particular serious consequences in the future, the Tribunal may make an award (“provisional award”) calculated in accordance with *subsections (1) and (2)* but assessed on the assumption that such serious consequences will not occur, identifying those consequences and specifying the period within which the claimant may apply in the event of such occurring, and

- (c) subject to *paragraph (b)*, where the consequences referred to in this subsection do occur, the claimant may apply for an award of further compensation in accordance with the terms of the provisional award.”.

—Brid Smith.

- 12. In page 13, between lines 22 and 23, to insert the following:

“Amendment of Civil Legal Aid Act 1995

- 19. Section 28 of the Civil Legal Aid Act 1995 is amended by the insertion of the following subsection after subsection (11):

“(12) The Board shall grant legal aid to any applicant before the CervicalCheck Tribunal.”.

—Stephen S. Donnelly.

- 13. In page 13, to delete line 24 and substitute the following:

- 19. (1) The Tribunal—

- (a) may award costs in relation to a claim, and
- (b) shall, in a case where it makes an award to a claimant, award costs in relation to that claim to the claimant.”.

—Alan Kelly.

- 14. In page 17, to delete lines 36 to 38, and in page 18, to delete lines 1 and 2 and substitute the following:

- 28. (1) Where—

- (a) a claimant in respect of whom an award has been made accepts the award, and
- (b) no other party to that claim, within the period specified in *section 27(2)(a)*, appeals to the High Court from the determination of the Tribunal,

the Tribunal shall, as soon as practicable after the expiration of that period, by motion on notice to the parties to the claim, make an application in a summary manner to the High Court for confirmation of the determination.”.

—Alan Kelly.