

Personal Injuries Resolution Board Bill 2022

Bill No. 78 of 2022

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Abstract

The *Personal Injuries Resolution Board Bill 2022* provides for a number of reforms to the Personal Injury Assessment Board. These include the changing of its name to the Personal Injuries Resolution Board, the establishment of a mediation procedure and the expanding of the types of claim that may be considered by the Board's structures. The Bill also makes amendments to the provisions relating to costs, the functions of the Board and provides for offences relating to false and misleading information.



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Introduction and Background

The [Personal Injuries Resolution Board Bill 2022](#) (the Bill), published on 2 August 2022, proposes to make a number of reforms to the Personal Injuries Assessment Board (PIAB), including renaming PIAB as the Personal Injuries Resolution Board (PIRB).

The Personal Injuries Assessment Board was established by the [Personal Injuries Assessment Board Act 2003](#) (the Principal Act). PIAB is an independent statutory body which assesses personal injury compensation. Its role is to provide an independent assessment of claims for compensation for personal injuries arising from three categories of liability:

- Motor liability
- Employer liability
- Public liability

According to the [press release](#) issued on publishing the Bill, the Bill will amend the Personal Injuries Assessment Board Act 2003-2019 to provide for PIAB to:

- offer mediation as a means of resolving a claim
- retain claims of a wholly psychological nature
- have additional time to assess claims where an injury is yet to settle rather than releasing to litigation
- seek proof of identity on application and disclose information to An Garda Síochána to reduce fraud, and
- deepen its analysis and public information roles.¹

The Bill also proposes to amend [section 51A](#) of the Principal Act to encourage early resolution of claims and minimise costs, and provides that where a claimant takes litigation following an assessment accepted by the respondent, the assessment will have the status of an offer of tender payment. Finally, the Bill also provides for offences relating to providing false or misleading information in an application or assessment by the perspective PIRB.²

Policy and legislative context

[Section 3 of the 2003 Act](#) sets out the types of injury to which PIAB applies, providing for the three types of liability above and civil actions not falling into the above categories with the exception of health services, medical/surgical procedures and any medical advice/treatment. [Section 3A of the 2003 Act](#) makes further provision for the types of civil action to which the Act does not apply.

According to its [2021 Annual Report](#), the PIAB process leads to quicker, consistent and cheaper resolution of claims, stating that its assessments are fair, independent and non-adversarial. Since 2021, PIAB has used the [Personal Injury Guidelines](#) formulated by the Judicial Council. It is also important to note that PIAB does not make any finding in relation to liability and only assesses

¹ Department of Enterprise, Trade and Employment, [Significant reform of the personal injuries landscape in Ireland underway as Personal Injuries Resolution Bill published by Minister Troy](#) (press release, 2 August 2022).

² Ibid.

claims made to it by an injured party. The parties may resolve personal injury claims either by direct settlement, through an assessment by PIAB, or through litigation.

The current process provides that PIAB is an assessment body for injuries that come under its remit. [Section 11](#) of the 2003 Act sets out what is involved in an application. A claimant cannot go directly to the courts and must first apply to PIAB for an assessment, and may only take proceedings if an authorisation is granted ([section 12 of the 2003 Act](#)). However, section 12 does permit interlocutory applications to the courts, e.g. to prevent the transfer of assets. If the respondent refuses to consent to an assessment, then PIAB may authorise the claimant to pursue the matter through the courts.

The PIAB process may be broadly summarised as follows:

- The claimant applies to PIAB for compensation.
- PIAB then informs the respondent, giving them 90 days to agree to a PIAB assessment.
- If the respondent agrees, they must pay a fee. Otherwise, PIAB will authorise the claimant to pursue the claim through the courts.
- Where PIAB makes an assessment, the claimant has 28 days to decide whether to accept the award. The respondent has 21 days to decide whether to accept the assessment.
- If the claimant or respondent rejects the assessment, PIAB issues an authorisation for the claimant to pursue the matter in the courts.

While PIAB is broadly regarded as a law reform success story, reforms have been proposed in recent years. The [Personal Injuries Assessment Board \(Amendment\) Act 2019](#) provided for some changes to the PIAB process, most notably providing that a claimant or respondent who refuses to cooperate with PIAB may be penalised in terms of costs by the courts. A previous [Bill Digest](#) considered the previous reforms to PIAB under the 2019 Act.³

Since the 2019 Act, one of the most significant developments is the replacement of the Book of Quantum, which was developed by PIAB⁴, with the [Personal Injury Guidelines](#) developed by the Judicial Council. PIAB began applying these guidelines to all cases assessed after the commencement date for the guidelines, 24 April 2021.⁵

In its 2021 Annual Report, PIAB focuses in particular on the impact of the Guidelines, noting that the average award of €23,877 of 2020 decreased to €13,825 following the Guidelines, representing a reduction of 42%.⁶ In relation to reductions by category, the below table summarises the Guidelines' impact on the average value of claims.

³ Oireachtas Library & Research Service, 2018, [Bill Digest – Personal Injuries Assessment Board \(Amendment\) \(No. 2\) Bill 2018](#).

⁴ The Book of Quantum was based on prevailing court awards and settlements.

⁵ Personal Injuries Assessment Board, [Personal Injury Guidelines – Questions and Answers](#) (webpage), 10 May 2021.

⁶ Personal Injuries Assessment Board, [Annual Report 2021](#), at p.11.

Table: Impact of Personal Injury Guidelines based on averages in 2020 and 2021⁷

| | 2020 | 1 Jan to 23 Apr 2021 | 24 Apr to 31 Dec 2021 |
|---------------------|---------|----------------------|-----------------------|
| Motor Liability | €22,357 | €24,409 | €13,241 |
| Employers Liability | €30,558 | €35,311 | €18,915 |
| Public Liability | €26,065 | €29,767 | €15,162 |

Source: Reproduced from PIAB, Annual Report 2021.

Stakeholder Commentary

The Department of Enterprise, Trade and Employment undertook a public consultation on enhancing and reforming PIAB in March 2021. This arose from the commitment made in the Programme for Government and more specifically, Action 18 of the [‘Action Plan for Insurance Reform’](#).⁸ Arising from the public consultation, in February 2022, the Department published a Report entitled [‘Insurance Reform, Report of the public consultation on enhancing and reforming the Personal Injuries Assessment Board’](#) (the Insurance Reform Report).⁹ The Insurance Reform Report noted that any proposals to reform and enhance PIAB need to be considered within the broader context of the cross-Government approach set out in the Action Plan for Insurance Reform.

The Insurance Reform Report also set out the main objective in reforming PIAB was to reduce the amount of court cases and ultimately reduce insurance premiums:

The overarching objective in seeking to enhance and reform PIAB is to bring more cases within PIAB’s ambit and reduce the number of cases and time involved in progressing to litigation. Encouraging more claimants and respondents to avail of the PIAB model should lead to cost savings in the claims environment which should ultimately lead to reductions in insurance premiums.¹⁰

The Department received 240 submissions from a broad range of stakeholders, including businesses and community organisations. Overall, there was widespread support for introducing a mediation process to PIAB. Stakeholder comments included that mediation should not introduce additional delays or costs compared to bringing the claim to court and that the mediation process should not replace the assessment process as this could significantly reduce the benefits and efficiencies of the PIAB process.¹¹

The Alliance for Insurance Reform is a group of civic and business organisations from across Ireland who call for reforms to reduce liability and motor insurance premiums to what they propose

⁷ Ibid.

⁸ Government of Ireland, [‘Action Plan for Insurance Reform’](#), December 2020. The Action Plan was produced by the Cabinet Committee Sub-Group on Insurance Reform and set out several Principal Actions. These encompassed reforming and enhancing the role of PIAB including through legislative proposals.

⁹ Department of Enterprise, Trade and Employment, [Insurance Reform, Report of the public consultation on enhancing and reforming the Personal Injuries Assessment Board](#), February 2022.

¹⁰ Ibid, at p.2.

¹¹ Ibid, at p.7.

are affordable levels. A press release issued by the Alliance when the General Scheme of the Bill was published on 9 February 2022 gave a 'guarded welcome' to the draft legislation.¹² While it welcomed a number of changes included in the General Scheme, including the introduction of the mediation process, it also highlighted key elements which it felt were missing from the draft legislation. These were:

- Empowering PIAB to adjudicate on claims with no need to go to litigation except in limited circumstances;
- Establishing an independent national claims database for use in encouraging competition and preventing fraud.

Eoin McCambridge, one of the Directors of the Alliance, highlighted the Alliance's concerns over what it considered a 'missed opportunity' in reforming PIAB:

It is disappointing that today's proposed legislation does not allow PIAB to adjudicate on claims. This is a missed opportunity. PIAB has vast experience with regard to personal injuries, accumulated over 17 years of processing virtually every claim in the country. Indeed, they now process and assess way more claims than the Judiciary, as very few cases ever get into a courtroom. But far too many of the claims they process move on to needless litigation. And as has been illustrated time and time again now by the Central Bank's NCID, the only beneficiaries of litigation in personal injury claims are solicitors and barristers, with the acquiescence of insurers.¹³

Insurance Ireland is the representative organisation for the insurance sector in Ireland. Along with the Alliance for Insurance Reform, it appeared before the Oireachtas Committee during PLS hearings. At the time of the publication of the Bill, Insurance Ireland, issued a press release welcoming its publication, hailing it as "another positive step to reforming the Irish insurance landscape". It also suggested that the Bill, "once enacted, will increase the number of personal injury claims settled through an enhanced PIRB and reduce the expense and time associated with personal injuries litigation".¹⁴

The Law Society of Ireland is the regulatory and educational body of the solicitors' profession in Ireland. A submission, prepared by the Litigation Committee on behalf of the Law Society, acknowledged that a mediation process would be useful but expressed concern in warning against the possibility of access to justice being delayed:

It is essential that PIAB allows the claimant their constitutional right of access to the court in the most expedient manner possible, while attempting to resolve as many claims as possible without incurring unnecessary costs.¹⁵

¹² Alliance for Insurance Reform, '[Alliance welcomes progress in PIAB reform legislation: Highlights risks and missed opportunities in draft legislation](#)', *Press Release*, 9 February 2022.

¹³ Ibid.

¹⁴ Insurance Ireland, '[Insurance Ireland welcomes publication of the Personal Injuries Resolution Board Bill](#)', *Press Release*, 3 August 2022.

¹⁵ Law Society of Ireland, '[PI timeline chokehold 'will delay access to justice](#)', *Gazette.ie*, 10 February 2022

Regulatory Impact Analysis (RIA)

In July 2022, the Department of Enterprise, Trade and Employment published a [Regulatory Impact Analysis](#) for the Bill. The RIA notes the background for the Bill in the Action Plan for Insurance Reform, through which the Government has prioritised reform of the insurance sector.

Benefits of the PIAB model and the impetus for reform

The RIA considers the benefits of the PIAB model and the impetus for reform, noting that:

“PIAB has been successful in reducing both the costs associated with claims and the time taken to resolve claims at no cost to the exchequer. The PIAB process annually saves tens of millions of euros which would otherwise be paid in costs by the parties, and ultimately by policyholders.¹⁶

It also noted the impact of the Personal Injury Guidelines adopted by the Judicial Council in 2021, noting that they bring more certainty and consistency and should lead to more claims being settled through PIAB and less going to litigation.¹⁷ This section of the RIA also considered the impact of legal costs between claims settled through PIAB and claims settled through litigation. It references the NCID Reports, noting that while they make clear that PIAB is the most timely and cost-effective means of settling a claim, only 15% of motor claims and 11% of employer liability / public liability claims are settled through it.¹⁸

The RIA notes that PIAB awards may be accepted or rejected by both claimants or respondents, with about 90% of respondents accepting compared to a claimant acceptance rate of over 50%. Further, it references a 37% acceptance since the introduction of the Personal Injury Guidelines, but states that definitive reasons for this drop are presently unclear. The RIA also notes developments in relation to challenges to the Personal Injury Guidelines, also noting an expectation that acceptance rates will improve as there will be consistency and predictability of awards from both the courts and PIAB.¹⁹

Policy Objectives of the Proposal

The RIA outlines three broad policy objectives of the proposal:

- Amendments to the discretionary powers provided to the Board in order to enhance the number of personal injury claims it may resolve.
- Allow the Board to facilitate mediation on a consent basis, which is intended to increase the number of personal injury claims settled by the Board. Mediation, the RIA notes, is used by other bodies such as the Residential Tenancies Board, Workplace Relations Commission and the Financial Services and Pensions Ombudsman.

¹⁶ Department of Enterprise, Trade and Employment, [Regulatory Impact Analysis – Personal Injuries Resolution Board Bill 2022](#), July 2022, at p.4.

¹⁷ Ibid.

¹⁸ Ibid, at p.5.

¹⁹ Ibid, at p.6.

- Renames PIAB as the Personal Injuries Resolution Board (PIRB) and enhances its role in promoting its work, data and reporting, and measures to facilitate the prevention of fraud.²⁰

Policy Options

The RIA considers two policy options across a range of possible measures; do nothing or enact legislative measures.

It identifies and describes these options across six main areas covered by the Bill:

- Amendments to section 17 of the Act
- Provisions for Mediation
- Functions of Board
- Costs in proceedings where the claimant does not accept a PIAB assessment
- New Offence Provisions, and
- Miscellaneous Provisions.²¹

Impact Analysis

The RIA also includes an impact analysis which looks at a range of areas. In relation to National Competitiveness, it considers the issue of insurance costs, noting the view of the National Competitiveness and Productivity Council that the cost of employer and public liability insurance is undermining national competitiveness, and the view of the Council that enhancing and reforming the role of PIAB is an important measure for addressing such costs. A general observation of stakeholders is that the costs associated with claims and litigation is a reason for the increase in insurance premiums in Ireland.²²

The RIA suggests that the reform of PIAB should not have any adverse impacts on socially excluded and vulnerable groups and should have positive impacts resulting from price reductions to premiums.²³ The impact on competition and consumers was also considered, with the RIA pointing to the recommendation of the CCPC that the role of PIAB be expanded to become the personal injury settlement channel in Ireland.²⁴

The impact analysis also applied an SME Test to assess the possible impact on SMEs. The considered three areas, which are summarised as follows:

- Exemptions: The PIAB Act (2003 Act) provides no additional regulatory requirement on SMEs. The RIA notes the likelihood of the SME having public/employer liability insurance and that PIAB is a voluntary process.
- Deadline variation / flexibility: The PIAB Act sets out the timeframes for the respondent to consent to assessment, for PIAB to make an assessment and for a respondent to accept

²⁰ Ibid, at p.7.

²¹ Ibid, at pp.8-18. This section of the RIA includes a table which sets out the policy options considered in drafting the Bill.

²² Ibid, at p.19.

²³ Ibid, at pp.19-20.

²⁴ Ibid, at p.20.

an assessment. The RIA states that given the nature of the personal injury environment, it would not be appropriate to allow variation / flexibility regarding these timelines for different classes of business.

- Simplification of the implementation of regulation: The provisions of the PIAB do not amount to the regulation of any particular business sector and are solely concerned with the assessment of personal injury claims. Further, the provision of mediation also does not amount to the regulation of a business.²⁵

The impact analysis also addresses suggestions that PIAB be placed on a quasi-judicial footing, stating that while the suggestion was considered in depth, there are a number of convincing counter-arguments against it. These include constitutional consideration in terms of the fundamental rights of access to justice and access to the courts, as well as common law considerations. The legislation was framed in recognition of these factors and instead makes proposals that promote a mutually agreeable outcome.²⁶

Considerations in relation to mediation are also considered in the impact analysis, while the RIA does not envisage any impacts on the environment or on North-South or East-West relations.

Pre-legislative scrutiny of the General Scheme of the Bill

The Joint Committee on Enterprise, Trade and Employment undertook two hearings in its pre-legislative scrutiny (PLS) of the General Scheme of the Bill:

- Department of Enterprise, Trade and Employment, [General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion](#), 30 March 2022.
- Insurance Ireland and the Alliance for Insurance Reform, [General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion \(Resumed\)](#), 25 May 2022

The Committee considered several issues relating to the proposed legislation. In its engagement with the Department, it explored the issue of mediation. The Department highlighted the impact of the guidelines to reducing the cost of claims, and the expected impact on insurance premiums, stating the following to the Committee:

“We know from the Central Bank’s data over a number of years that the cost of settling a claim through PIAB is significantly less expensive than through litigation. We also know that the cost of claims has a 40% to 50% impact on premiums. Therefore, we can see already in the data that are coming out of PIAB that the personal injuries guidelines have reduced the awards by about 40% and there should be a consequent reduction in premiums. That is the expectation. If we take, for example, the cost of taking a claim through litigation, in terms of the award, there is very little difference between the PIAB award and what you get if you settle outside of PIAB. The difference is the cost of litigation. The purpose of the Bill is to

²⁵ Ibid, at pp.20-21.

²⁶ Ibid, at pp.21-22.

ensure more of those cases are settled through PIAB, which should then mean the cost of claims is lower, the cost of litigation is lower and, therefore, that should help premiums ..."²⁷

Mediation

The Department told the Committee that the intention is that mediators will be PIAB / PIRB staff and that the General Scheme of the Bill was modelled on the Mediation Act. It also highlighted the well-established mediation functions in the Workplace Relations Commission, the Financial Services and Pensions Ombudsman and the Residential Tenancies Board.²⁸

On the issue of legal fees, the Department observed that the new Personal Injury Guidelines did not just reduce the level of awards, but also resulted in much of the caseload being moved from the higher courts into the lower courts. It highlighted that mediation is voluntary, so no significant increase in legal costs is expected. Further, the Department also advised that the mediation will be legally binding.²⁹ The Department also addressed the issue of the administration of justice, clarifying that the functions of PIAB are not an administration of justice and that it merely facilitates mediation, which involves agreement between the parties.³⁰

Stakeholders were also supportive of the mediation approach, noting the current figures of 12% to 15% of claims currently settled through PIAB and some 10% of claims settled immediately after PIAB hearings.³¹ Stakeholders also noted the variance in legal fees between the current PIAB route and the litigation route, on which the Committee was told the average legal fees were €1,705 and €18,680 respectively.³²

Data Collection and Research

The Committee also considered the issue of data collection and was told that PIAB is a very rich source of data, with this data including the types of accidents and injuries, which can help in reducing the risk of injuries. Further, the Committee was also told that this data may be complementary to what is on the NCID on claims, settlements, length of time etc.³³

²⁷ Mr John Maher, Principal Officer, Department of Enterprise, Trade and Employment, [General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion](#), Joint Committee on Enterprise, Trade and Employment, *Committee Debate*, 30 March 2022.

²⁸ Mr John Newham, Assistant Secretary, Department of Enterprise, Trade and Employment, [General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion](#), Joint Committee on Enterprise, Trade and Employment, *Committee Debate*, 30 March 2022.

²⁹ Ibid.

³⁰ Mr John Maher, Principal Officer, Department of Enterprise, Trade and Employment, [General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion](#), Joint Committee on Enterprise, Trade and Employment, *Committee Debate*, 30 March 2022.

³¹ Ms Moyagh Murdock, CEO, Insurance Ireland, [General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion \(Resumed\)](#), Joint Committee on Enterprise, Trade and Employment, *Committee Debate*, 25 May 2022.

³² Mr Peter Boland, Director, Alliance for Insurance Reform, [General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion \(Resumed\)](#), Joint Committee on Enterprise, Trade and Employment, *Committee Debate*, 25 May 2022.

³³ Mr John Maher, Principal Officer, Department of Enterprise, Trade and Employment, [General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion](#), Joint Committee on Enterprise, Trade and Employment, *Committee Debate*, 30 March 2022.

While it welcomed the formal addition of functions to PIAB on the publication of data and research on personal injuries and related areas, the Alliance for Insurance Reform proposed that InsuranceLink, Insurance Ireland's data-sharing platform, is transferred to the ownership of PIAB.³⁴

Other Issues

A number of other issues were highlighted by the Alliance for Insurance Reform, including:

- That PIAB / PIRB be established as a quasi-judicial body, as PIAB now has an expertise necessary to facilitate the adjudication of personal injury claims.
- That a review mechanism is added to the legislation, similar to the review mechanism relating to the Legal Services Regulatory Authority. This review mechanism is provided for in [section 6](#) of the Legal Services Regulation Act 2015.
- That [section 50](#) of the Principal Act is removed from the legislation. This currently allows for the timeframes set out in the Statute of Limitations to be paused so this does not interfere with the constitutional right of access to justice.
- That PIAB may re-propose mediation to parties later in an assessment and that either party may propose mediation at any stage. Further, it also suggested that if either party refused to engage in mediation, such a refusal may be factored into costs in any subsequent cost judgment.

The above issues are also discussed in the Committee's PLS Report.³⁵

The PLS Key Issues

The below table sets out the key issues raised by the Committee and the responses of the Department, as articulated in the Committee's Report.³⁶ The table follows an established process in L&RS Bill Digests where the input of the Department is sought when assessing how the recommendations of, and issues raised by, the relevant Oireachtas Joint Committee are addressed by the Bill. As the Committee did not make recommendations, the traffic light dashboard is not used, but the L&RS extended the opportunity to the Department to confirm its response to the issues outlined in the report. The L&RS is grateful to the Department of Enterprise, Trade and Employment for confirming the positions in the below table.³⁷

³⁴ Mr Peter Boland, Director, Alliance for Insurance Reform, [General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion \(Resumed\)](#), Joint Committee on Enterprise, Trade and Employment, *Committee Debate*, 25 May 2022.

³⁵ Joint Committee on Enterprise, Trade and Employment, [Report of the Pre-legislative Scrutiny of the General Scheme of the Personal Injuries Resolution Board Bill 2022](#), July 2022, at pp.13-15.

³⁶ Joint Committee on Enterprise, Trade and Employment, [Report of the Pre-legislative Scrutiny of the General Scheme of the Personal Injuries Resolution Board Bill 2022](#), July 2022.

³⁷ Department of Enterprise, Trade and Employment, Personal Communication.

Table: Dashboard containing Key Issues raised and Departmental Response from the PLS Report

| Commentary as per the Committee Report | Whether addressed (either in whole or in part) in the Bill |
|--|--|
| <p>Members raised the issue of upskilling for the handling of data which may be necessitated by this legislation. The importance of data protection was highlighted, and it was asked whether upskilling was needed to ensure people's data would be handled correctly by staff. The issue of additional supports and resources for staff being required was also raised, and if so, was this being factored into future work plans.</p> | <p>The Department acknowledged the importance of data protection and agreed it will be important staff would have the skills required to handle it. The Department stated its preference for skills not being brought in on a temporary basis or outsourced but that, given the sensitive nature of data protection, they would be in-house. They acknowledged this would likely require a high level of upskilling for personnel if those skills are not available or if they exist but need to be enhanced.</p> <p>The Department stated that staff of the Personal Injuries Assessment Board (PIAB) would need to ensure they have the skills and awareness around data protection and further areas, such as mediation. They assured the Committee that there is a well established data protection process in place at PIAB. Staff of PIAB receive regular training and briefing on data protection in the claims handling process, and PIAB would compile a significant number of data protection impact assessments regarding their work.</p> <p>Department officials stated that, in developing the Bill, the Department would work with the Data Protection Commission, DPC, and the Department of Social Protection to ensure data protection safeguards are in place.</p> |
| <p>Concern was expressed about the prospect of hiring mediators from outside the PIAB. Members highlighted the importance of the creation and retention of an organisational memory regarding mediation. This could be an issue should mediators not be part of the organisation itself.</p> | <p>The Department stated that it was its intent for PIAB staff to be the mediators. They acknowledged that exceptional circumstances, such as high workloads particularly at the start of this legislation coming into effect, may require some level of outsourcing, but they were in favour of mediation services being provided by PIAB staff. They highlighted the importance to the parties involved in the mediation process having trust in the mediator. In the Department's view, trust in mediators would be enhanced if they were from PIAB.</p> |
| <p>Members questioned the impact of the legislation on users at the very end of this process. They queried its implications for the insurance market and how it would affect ordinary people trying to get insurance.</p> | <p>The Department stated the Bill's intent was to introduce more predictability, removing volatility in terms of awards and this should have a downstream impact on insurance premiums, the insurance sector and claimants. With this legislation, when claimants go to PIAB, they should have a much clearer understanding of what level of awards are likely with reference to the personal injuries' guidelines.</p> <p>The Department highlighted data from the Central Bank to show the cost of settling a claim through PIAB is significantly less expensive than through litigation. They stated that the cost of claims has a 40% to 50% impact on premiums. They stated that data coming out of PIAB shows that the personal injuries guidelines have reduced the awards by about 40% and there should be a consequent reduction in premiums.</p> <p>They believe that in the cost of taking a claim through litigation, in terms of the award, there is very little</p> |

| | |
|---|--|
| | <p>difference between the PIAB award and what you get if you settle outside of PIAB and the difference is the cost of litigation. The Department believe that the cost of litigation is lower going through PIAB and, therefore, this should help premiums.</p> |
| <p>Concerns were raised that the mediation process the Bill proposes to introduce could result in lengthy cases and enhanced legal fees.</p> | <p>The Department responded that the Bill would not prolong cases as the board will still be required to resolve them within nine months, so the mediation would not interfere with that.</p> <p>The Department stated that the personal injuries guidelines do not just reduce the level of awards and that one of the side effects of that reduction has been significant caseload moving from the higher courts into the lower courts, reducing legal costs.</p> <p>The Department do not envisage mediation resulting in significant increases in legal costs.</p> |
| <p>Concerns were raised by Members as to the confidentiality of matters discussed during mediation. The issue of matters which were discussed during mediation being brought into court was highlighted.</p> | <p>The Department stated that the General Scheme provides that mediation is confidential and that there would only be very limited circumstances as to when details of discussions could be disclosed.</p> |
| <p>Members expressed concern over the separation between the mediation service and assessment service being provided within PIAB. They stressed the need for clarity regarding the distinction between mediation and assessment services.</p> | <p>The Department acknowledged it would not make sense for someone to be both mediating and assessing on a case and agreed as to the need for clarity on the issue. They stated that this separation would be configured within PIAB and that a very clear distinction between mediation and assessment would be laid out.</p> |
| <p>The need to fully protect those who come forward with legitimate injuries was highlighted during discussions. The Department was questioned on the protections such people would be afforded in the mediation process and what supports they would have. As they may be accompanied by somebody, such as a legal adviser, additional costs could be a factor. The need for a clear understanding of what supports would be there for a person bringing a claim is evident as a result.</p> | <p>The Department stated that PIAB will provide advice regarding the claim's environment. They reiterated that during mediation, people may avail of legal representation or whatever legislation they feel is necessary. However, they did acknowledge the point made by Members regarding supports and hardwiring these into the Bill. They assured the Committee they would consider this issue while progressing the legislation through the Houses.</p> |
| <p>Members raised the issue of cases that might be retained where, based on medical evidence, the prognosis cannot be interpreted within the statutory timelines. One concern was where a payment was made, and the claim extinguished and not revisited. More clarity was sought on this issue. For example, following an accident, medical conditions can arise much later and subsequently worsen. Without medical evidence at the time, as it says in the guidelines, if it cannot be determined within the statutory timelines, that might need to be revisited.</p> | <p>The Department acknowledged this point. They stated there is an important balance to be struck between the right of access to a court and the public interest in settling claims through PIAB where that long-term prognosis is yet to be arrived at. They stated this would be something they would have to take very carefully into consideration when drafting the Bill and that it would be something the Oireachtas would have a view on ultimately.</p> |

Source: Joint Committee on Enterprise, Trade and Employment, [PLS Report](#) and confirmation from the Department regarding recent developments.

Principal provisions of the Bill

This section of the Bill Digest examines and summarises the provisions of the Bill, which comprises 23 sections. It is not a summary of every provision but rather, as suggested by the title above, its principal provisions.

Change of Name of the Board

Section 2 provides for the change of the Board's name from the Personal Injuries Assessment Board to **An Bord um Réiteach Díobhálcha Pearsanta** or the **Personal Injuries Resolution Board**. It further provides that references to the Personal Injuries Assessment Board in other legislation be read as a reference to the PIRB.

Amendments to Application Provisions of Principal Act

Section 3 makes three amendments to [section 11](#) of the Principal Act, which relates to applications to the Board.

- The first amends subsection (1) to allow for claimants to also apply for the mediation process.
- The second amends subsection (3) to provide for identity documents to be specified to accompany an application where the claimant does not have a PPS number.
- The third amendment under the section provides for the Statute of Limitations to continue to run in respect of an application unless it is signed and includes confirmation of details set out in the proposed subsection (3A).

Section 4 amends subsection (2) of [section 13](#) of the Principal Act to allow for the mediation process where the Board notifies the respondent of the application. It provides that when notifying the respondent that it has received the claimant's application, the Board requests the respondent to state in writing whether they consent to an assessment by the Board and / or mediation.

Sections 5 amends [section 14](#) of the Principal Act to account for the mediation process, providing that the Board will arrange for mediation if the respondent consents to it, and further providing that the existing assessment procedure shall apply if the respondent does not consent, or fails to state their consent in writing, to mediation.

Section 6 makes further amendments to [section 16](#) of the Principal Act to account for the mediation process, providing that a statement consenting to mediation or an assessment, or failing to state consent to an assessment in writing, is not to be construed as an admission of liability or as evidence in proceedings.

Discretion of the Board

Section 7 amends [section 17](#) of the Principal Act, which relates to the discretion of the Board to not arrange for the making of an assessment.

While this provision contains some technical amendments to again expand its provisions to the mediation process, it does make two significant amendments:

- The first is the deletion of section 17(1)(ii)(II), which allowed for PIAB to not arrange or to discontinue an assessment where in its view it would not be appropriate because the injuries alleged to have been sustained consist wholly or in part of psychological damage

where the nature or extent of the injury would be difficult to determine by means of an assessment.

- The second is the deletion of section 17(1)(iii), which allowed for PIAB to not arrange or to discontinue an assessment because in its view the assessment would have to be deferred in order for a long-term prognosis of the injuries to be made such that [section 49](#) may not be complied with.

These deletions have the effect of expanding the types of claims that may be considered by the Board to claims that are wholly psychological in nature or where a long-term prognosis is not available.³⁸

Capacity

Section 8 makes a technical amendment to expand the provisions of [section 18\(3\)](#), which relates to circumstances where the Board's presumption of the claimant's capacity may be rebutted, to also include mediation.

Mediation

Section 9 of the Bill proposes to establish a mediation procedure. It proposes to insert a new Chapter 1A, dealing with Mediation, into the [Principal Act](#). The proposed chapter has six sections:

- Section 18A: Application and definitions
- Section 18B: Mediation process
- Section 18C: Mediation outcome and report
- Section 18D: Appointment of mediators
- Section 18E: Provisions relating to mediators
- Section 18F: Power of the Board to make procedural rules relating to mediation

Section 18A: Application and Definitions

This section sets out the circumstances in which mediation can take place and provides definitions of relevant terms. Mediation may be sought in the following circumstances:

- a historical claim for assessment was already in place before the commencement of section 9 of the Bill;
- no authorisation had issued for the claim;
- the claimant or the respondent had not responded to a notice of a written assessment within specified time frames; and
- and a relevant claim where an application was made on or after the commencement of section 9 of the Bill.

Definitions for the following terms under the mediation process are set out under section 9:

- "date of the completion of the mediation" means—

³⁸ [Explanatory Memorandum](#), Personal Injuries Resolution Board Bill 2022.

- (a) the date that the document referred to in section 18C(1)(b) [mediation report] is signed by each of the parties, or
- (b) where the document is signed by the parties on different dates, the last of those dates”
- “‘Mediation’ means a confidential, facilitative, and voluntary process in which parties to a relevant claim, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the relevant claim”
- “‘mediator’ has the meaning assigned to it by section 18B(4)”.

Section 18B: Mediation Process

This section sets out the parameters around which the mediation process can take place and the Board’s duties in relation to mediation. It contains 12 subsections which broadly provide that:

- The Board, can where it considers it appropriate:
 - invite parties to consider mediation on a voluntary basis;
 - provide balanced information on the objectives and benefits of mediation.
- The Board must ensure that the parties understand the objective of the mediation is to have the claim resolved by agreement reached by both parties.
- The Board must arrange for mediation where both parties consent and it must be undertaken either by assigned PIRB employees as mediators or appointed external mediators.
- The mediator must, in trying to resolve a claim through the agreement of both parties:
 - fully inquire into all relevant aspects of the claim;
 - impart to and accept from the parties any appropriate information;
 - make suggestions and take actions as the mediator considers appropriate.
- Participation is voluntary and consent may be withdrawn at any time prior to the completion of the mediation process. Parties may have a person accompany them, including a legal advisor.
- The Board, where it considers it appropriate, can abandon an attempt at resolving a claim through mediation, prior to completion, where the mediator has failed to furnish report within the period specified by the Board. It can refer the claim back for assessment provided for under [section 20](#) of the Principal Act.
- The Board is not required to arrange mediation where one or more respondents does not consent or fails to respond to notice of an assessment.
- All communications, records, and notes, including the mediation report, relating to a mediation are confidential and must not be disclosed in relation to an assessment under [section 20](#) of the Principal Act or court proceedings.

- There are exceptions to this disclosure rule in the following circumstances, where such exceptions are:
 - necessary in order to implement or enforce a mediation settlement
 - necessary to prevent physical or psychological injury to a party
 - required by law
 - necessary in the interests of preventing or revealing, the commission or concealment of a crime or a threat to a party
 - sought or offered to prove or disprove a civil claim concerning negligence or misconduct of the mediator occurring during the mediation or a complaint to a professional body concerning such negligence or misconduct.
- Evidence used or introduced during mediation that is subject to discovery or admissible in court proceedings cannot be found inadmissible on the basis that it was introduced during mediation.

Section 18C: Mediation outcome and report

This section provides that a mediator must prepare a report as soon as possible after a mediation has concluded and furnish the report to the Board. It sets out what should be included in the report, including the following:

- matters agreed to be matters of fact by both parties;
- summary of matter(s) signed by both parties;
- relevant details regarding the mediation including the number of sessions, attendees and a list of documents (no content included) submitted to the mediator;

It also sets out potential outcomes following a mediation including the obligations of the Board:

- each of the parties can revoke a mediation agreement provided they give written notification to the mediator and Board within ten days of the completion of mediation;
- where a report is furnished stating there is agreement to resolve the claim, ten days has elapsed since completion of mediation and no written notification of revocation of parties agreement has been received, the Board must proceed to issue an order of payment for the respondent to pay damages to the claimant pursuant to section 38 of the Principal Act;
- no authorisation can be issued where an order for payment has been issued;
- where mediation is unsuccessful (either abandoned or agreement revoked), the respondent has provided consent and an assessment has not already been done, the Board must refer the relevant claim for assessment under [section 20](#) of the Principal Act.
- a claimant can still withdraw a relevant claim before an assessment has taken place as provided for under [section 47\(1\)](#) of the Principal Act;
- the Board has discretion to arrange an assessment under [section 20](#) where the respondent consents to it and not to arrange an assessment where a respondent has notified it of their intention not to accept the assessment under [section 17\(1\)\(b\)\(vii\)](#).

Section 18D: Appointment of mediators

This section gives the Board the power to appoint as many external people as mediators as it considers appropriate. The Board can form a panel containing the names of the external people appointed and has the power to set the time frame and conditions of employment of the appointed mediators. The mediators are entitled to fees and expenses as determined by the Board, and agreed by the Minister for Enterprise, Trade and Employment and the Minister for Public Expenditure and Reform.

The appointed mediator(s) may give written notice of resignation to the Board, which is effective from the date of receipt of the notice or the date on the notice, whichever is the later date. The Board can for stated reasons revoke an appointment. The [Public Service Management \(Recruitment and Appointments\) Act 2004](#) or the Civil Service Regulation Acts 1956 to 2005 do not apply to a person appointed under this section.

Section 18E: Provisions relating to mediators

This section deals with procedural matters regarding mediators. It provides that:

- at the outset mediators must declare any potential conflicts of interest they are aware of or ought reasonably to be aware of;
- if such a declaration is made and unless both parties agree to the mediator continuing to deal with the matter, the Board must appoint another mediator;
- a mediator must maintain confidentiality of the mediation process and not disclose the mediation report except to the Board as provided for under section 18C;
- a mediator is prohibited from acting as an assessor or otherwise assessing a claim where they have acted as a mediator;
- a mediator has discretion as to the manner in which a mediation is conducted and is under a duty to conduct it without undue formality.

Section 18F: Power of the Board to make procedural rules relating to mediation

This section gives the Board the power to make procedural rules applicable to section 9 of the Bill. These include:

- specifying the timeframe in which a mediator is assigned to a claim and when the report must be furnished;
- specifying any other relevant timeframes the Board considers appropriate;
- specifying how the confidentiality of the mediation process will be maintained within the Board;
- specifying how mediation and an assessment under [section 20](#) of the Principal Act must be independent and separate from each other;
- specifying how the Board can facilitate the mediation process to take place online or via telephone.

Assessment of relevant claims where long term prognosis is awaited

Section 14 of the Bill inserts a new section 49A into the [Principal Act](#), after [section 49](#) which provides for a general duty to perform assessments swiftly and within a 9 month statutory period. The new section 49A sets out the circumstances where claims that involve a long-term prognosis can continue to be kept under assessment. Subsection 1 provides that where it appears to the Board, on foot of a medical report regarding the relevant injuries or a medical examination requested by the assessors where they consider it appropriate, that a long term prognosis will likely not be available within the usual 9 month period, the Board must then give written notice to the claimant and respondent(s) that it will not be possible or appropriate to make an assessment within that period. Subsection 2 provides that such a written notice must specify the period as determined by the Board in which another medical examination must be undertaken.

Subsection 3 provides that where a long-term prognosis has not been determined following a further medical examination, then the Board must give written notice to the claimant and respondent(s) advising them of this and requesting written confirmation of their consent for the Board to continue dealing with the matter. Under subsection 4, where either the claimant or the respondent(s) do not consent to the Board continuing to deal with the matter, the Board has a duty to issue a document to the claimant including the statement, which authorises the claimant to bring proceedings as provided for under subsection (9).

Subsection 5 gives the PIRB up to an additional two years to settle claims in cases where a long-term prognosis has not become available within the normal nine-month statutory timeframe. However, if the Board determines that it is not possible/appropriate to make the assessment within this additional timeframe, it must give written notice to the claimant and the respondent(s) advising them of this and requesting written confirmation of their consent for the Board to continue dealing with the matter.

Subsection 6 provides that where the claimant or any of the respondent(s) does not consent to the Board continuing to deal with the matter, the Board has a duty to issue to the claimant a document that contains the statement and operates to have the effect of authorising the claimant to bring proceedings as provided for under subsection (9). Where such consent is subsequently withdrawn, subsection 7 provides that it is the duty of the Board, as soon as possible after the date of the notice, to issue to the claimant a document that contains the statement and operates to have the effect mentioned in subsection (9).

Subsection 8 provides that any reference to a 'document' under subsection 4, 6 and 7, is also referred to as an authorisation within the Bill. Subsection 9 provides that authorisation under this section shall state that the claimant is authorised to bring court proceedings in respect of his or her relevant claim.

Amendments to costs in proceedings where assessment not accepted by claimant

Section 16 amends [section 51A](#) of the Principal Act which deals with costs in proceedings where the claimant does not accept the PIAB assessment. Section 16(1) does the following:

- substitutes a new subsection (3) providing (subject to applicable sections of the [Legal Services Regulation Act 2015](#)) that no costs arising court proceedings may be awarded or

- paid where the amount of damages awarded (if any) on foot of, or accepted in settlement of, those proceedings does not exceed the amount of the assessment;
- inserts a new section 3A which provides that where court proceedings are brought by the claimant, there is a presumption that the respondent tenders an offer of payment equal to the amount of the assessment of the relevant claim. It also gives the Court the power to waive this requirement where 'special cause is shown';
- provides a definition for 'relevant date';
- makes a number of minor conditional text replacements to reflect amendments introduced by section 16;

Section 16(2) sets out the circumstances where proceedings will not be impacted by the amendments introduced by subsection 1. These are, prior to the commencement of the section, where the claimant has refused an assessment in response to a notice under [section 30](#) of the Principal Act or where a claimant was considered not to have accepted an assessment under [section 31](#) of the Principal Act.

Amendment of the Functions of Board

Section 17 amends [section 54](#) of the Principal Act by inserting new paragraphs (a)(a) to (a)(e) after paragraph (a) to expand the functions of the Board. This includes providing for:

- a mediation process;
- collection and publication of personal injuries data;
- commission or conduct of research, compile information and publish any findings;
- to promote public awareness of, and conduct public information campaigns.

Offences: false or misleading information

Section 21 of the Bill inserts a new section 80A, after [section 80](#) of the Principal Act. This provides that a person will be guilty of an offence where they provide false or misleading information, either knowingly or recklessly in two instances:

- The first instance is providing false or misleading information to the Board that is of significant relevance to an application for assessment made under section 11 of the Principal Act;
- The second instance is where a person provides an assessor (an employee appointed by the Board to make assessments of relevant claims) with false or misleading information which is of significant relevance to a request made under [section 23](#) (power to require additional information from claimant or respondent(s)) or [section 26](#) (power to request information from third parties) of the Principal Act.

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