Submission by AXA Insurance Ltd on the operation and implementation of the Personal Injuries Assessment Board Acts 2003 and 2007.

General

AXA is fully supportive of the concept of and the policy behind the Injuries Board. The introduction of the Injuries Board has led to a decrease in insurance premium for both businesses and consumers. This is to be applauded.

The primary purpose of the Injuries Board was to exclude legal costs from the process of making a personal injury claim. Ee know from the Injuries Board's own statistics that 96% of claimants who make an application use a solicitor. Thus the legal profession continue to be a major component of the process. As such, the current legislation as it stands allows certain claimants to avoid the stated intention of the Acts as discussed below. Too many personal injury claims still continue to wind their way into the courts with attendant legal costs and at a cost to the State which must provide courts and judges to deal with these cases.

If it is accepted that the legal profession continues to be part of the process then consideration needs to be given to whether a legal cost payment as part of an award would lead to a higher acceptance rate and less cases going to court.

AXA believes that with certain amendments to the legislation and process the Injuries Board can deliver even greater benefit to claimants, policyholders, lawyers, Insurance companies and wider society.

The observations contained in this Submission may conveniently be divided into the following categories:

A: Legislative proposals to promote the stated intentions of the Acts and to limit the scope of claimants deliberately trying to avoid them;

B: Operational matters at Injuries Board level in dealing with claimants and insurers;

C: Matters pertaining to claims by Minors and other claimants under a disability;

Taking each of these in turn:

A: Legislative proposals to promote the stated intentions of the Acts and to limit the scope of claimants deliberately to avoid them;

In most cases claimants submit their applications to the Injuries Board (IB) appropriately completed and with the necessary medical reports and other documentation to vouch their claims for special damages. During the assessment period they cooperate with IB, and attend medical examinations and furnish information as and when required. However, not all applicants behave in this way.

With regard to medical reports difficulties can arise where the initial report submitted is inadequately detailed, and where the claimant subsequently fails to attend medical examinations arranged by IB. As the law stands, there is no compulsion on a claimant to attend for examination by a doctor appointed by IB. In such cases IB must either assess on the basis of inadequate medical information, or decide not to assess under S.17 of the PIAB Act. If the former, in the absence of all relevant medical information, it is likely that any Award made will be insufficient to properly compensate the claimant. In either case the claimant is likely to engage in litigation in circumstances where he will have effectively frustrated the operation of the PIAB Acts.

Legislative Proposal 1 : An amendment to the PIAB Acts to provide that a claimant who refuses to attend a medical examination is not entitled to legal costs in any subsequent litigation.

A number of applications are submitted which omit special damage details, or which provide little or no appropriate vouching. It happens regularly that Awards are rejected and in the subsequent litigation claims are made for genuine special damages which were known to have been incurred at the time the application was made. Where this occurs, the IB Award – omitting allowance for genuine losses – is certain to be inadequate, leaving the claimant free to reject and litigate without concern for the costs penalty provided in the Act of 2007.

In other cases extravagant but unsupported claims are made, usually under the heading of loss of earnings. This may be either in terms of amounts claimed which cannot be verified, or for losses extending over a period of time far greater than would be supported by the independent medical evidence obtained by IB. Usually IB declines to assess because of the "complexity of the issues". The claimant receives an Authorisation and again is free to litigate without concern for the costs penalty provided in the Act of 2007.

Both scenarios involve the effective frustration of the IB process and the following are proposed to address same:

Legislative Proposal 2 : An amendment to the PIAB Acts to provide that a claimant who fails to include in his IB application a claim for any special damages which were known to have been incurred or due to be incurred at the date of the application should not be entitled to costs in any subsequent litigation unless the amount of a court award exceeds the sum of the IB award plus such special damages.

Legislative Proposal 3 : An amendment to the PIAB Acts to provide that a claimant who is found to have deliberately made unsustainable claims in the course of his IB application shall not be entitled to any order for legal costs in subsequent litigation.

Two stated objectives of the Government's insurance reform programme are to compensate promptly and transparently the victims of accidents.

Prior to the coming in to operation of the PIAB Act, the effective time limit for the commencement of proceedings in the vast majority of personal injury cases was three years. The perhaps unintended consequence of the operation of the PIAB Act and S.7 of the Civil Liability and Courts Act 2004

(which was designed to shorten the limitation period to two years) is that the commencement of litigation can now be delayed for even longer periods. A claimant has two years to submit his application to IB. The IB process may consume a further year or more between the 90 day acceptance period, the 9 month assessment period and the further 21/28 day award acceptance or rejection time limit. In the event of rejection, or a delayed non-assessment by IB, an Authorisation then issues giving the claimant a further 6 months within which to commence litigation. It also frequently occurs that claimants in possession of an Authorisation delay until the last moment to issue proceedings. It is submitted that this effective elongation of the limitation period is contrary to Government policy and inconsistent with notions of prompt claims handling.

Legislative Proposal 4 : An amendment to the PIAB Acts and/or the Civil Liability and Courts Act 2004 to provide that the limitation period for submission of the application to IB be reduced to one year, and that where an Authorisation is issued that proceedings must issue within three months of same or two years from the date of the accident, whichever is the later.

There are elements of the current operation of IB which are not fully transparent so far as respondents and their insurers and are concerned. In a fully transparent system the respondent should receive in a timely fashion a copy of every document submitted by a claimant in support of his or her application, and every document obtained by IB which may form part of the assessment. This includes all medical reports and all documentation in support of claims for special damages and RBA Certificates. This does not occur at present. Until an assessment is made respondents are not given any medical reports other than the one furnished with the initial application. Where IB decides not to assess the current practice is not to forward anything other than Form A to respondents. During the course of the IB process a great many claimants in practice will decline to either furnish medical reports or attend for medical examination at the request of the respondent. The result is that for a considerable period of time the respondent insurer will be largely in the dark as to the extent of the injuries incurred and the other elements of the claim. This makes the task of estimation and reserving unnecessarily difficult, and it is obviously in the public interest that insurers are properly estimating and reserving. It is understood that IB is of the view that it does not have the power statutorily to share more documentation than it does at present.

Legislative Proposal 5 : An amendment to the current practice of IB supported if necessary by an amendment of the PIAB Acts to provide for the timely furnishing to respondents of all documentation submitted by claimants or forming the basis of assessment, whether or not an assessment is undertaken.

Legislative Proposal 6: Payment of some form of Legal fees to lawyers that will allow for a higher acceptance rate of awards.

B: Operational matters at Injuries Board level in dealing with claimants and insurers;

A survey of our experienced claims handlers has resulted in a number of suggestions which would facilitate interactions between insurers, respondents and claimants with IB in an even more efficient way than is already the case.

On occasion IB documentation is responded to by the Respondent personally in circumstances where the insurer – who is the ultimate payer – is identified on the IB application form. A procedure ought to be put in place whereby the insurer providing indemnity is given the option to either confirm or alter any response of the named Respondent (for example to consent to or decline assessment).

Operational proposal 1: Where an insurer is providing indemnity to a respondent in respect of a claim, the IB must accept the actions of the insurer over the respondent with regard to that claim. If this requires legislative change the appropriate amendment should be made to the PIAB Act.

It is considered that the following amendments to the IB communications practices would eliminate duplication and confusion in some instances:

Operational proposal 2: A) reduce frequency of payment reminder letters from two to one at 70 days; B)review wording of letters to insured respondents concerning payment of IB fees which will be paid by their insurers; C) where there are multiple respondents and the assessment fee has been paid by one, IB should routinely so advise the others;

It would be of great assistance to claimants and respondents and insurers alike if there was a method by which the progress of an application could be easily tracked, so that for example it would be possible to see whether a party had consented or declined, or a medical report had been received, or the matter was being actively assessed.

Operational proposal 3: Create an Online Tracking system where by simple login a party could establish the current position of a given claim

It would be of considerable assistance if IB were to notify insurers and respondents of the receipt of applications which are as yet incomplete. This occurs not infrequently, particularly in cases where the limitation period is about to expire.

Operational proposal 4: Reintroduce the prior practice of "advance notification" of incomplete claims.

Operational proposal 5: Furnish more granular statistics including average costs and frequency

In order to assist insurance companies in assessing the true value of claim in IB in terms of reserving and pricing more granular information is required. Annual or semi annual reports of awards by injury type, duration in IB, year of accident, rejection statistics would improve reserving practices. AXA's actuarial department suggested this could help reduce unnecessary uncertainty in the industry.

C: Matters pertaining to claims by Minors and other claimants under a disability;

The handling of claims by Minors in particular causes a lot of practical difficulty both for the claimants themselves and by responding insurers. These difficulties are not exclusively related to the IB process, but as Minor claims must first be submitted to IB it is appropriate to consider the overall position in the context of the current review of operation and implementation.

Under our law no settlement of any claim by a Minor is binding unless and until it has been approved by a Court. With regard to Awards in favour of Minors S.35 of the PIAB Act provides the necessity for same to be approved by a Court before they become binding. Rules of Court provide a mechanism whereby such awards can be ruled on an *Ex Parte* basis.

A significant omission from the legislative framework surrounding IB is any provision which would facilitate settlement of minor cases – subject to court ruling – either prior to or during the IB process. As matters stand, where such agreement is arrived at between respondents and the next friend of the Minor, the only mechanism available to get the matter before a Court for approval is for the parties to request IB to issue an authorisation to enable legal proceedings issue so that an application may then be made within the context of that civil action. This is unnecessarily cumbersome and expensive, and also deprives the parties of recourse to IB in the event that the settlement does not obtain Court approval.

S35 provides that an application to rule should be brought in the lowest Court which would have jurisdiction to rule on the amount of the assessment. In practice claimants frequently move the application in a higher court than is necessary, which causes costs to escalate.

Separately, (and while this goes beyond the strict limits of the present review) it should be noted that the ruling process as it currently operates in our Courts is also open to the criticism that it too is unnecessarily cumbersome and expensive, particularly in cases where the injuries are very mild and the compensation proportionately low. Attendance at Court by the Minor accompanied by the next friend and a legal team consisting of Solicitor and Counsel is the norm. It is not uncommon in the lower value cases for the costs to exceed the compensation. There is an argument to be made that such applications to rule might in the first instance be dealt with by means of written submission to the appropriate Court, reserving to the presiding Judge the power to require further information or a Court attendance if he considered such necessary to determine the issue.

Minor Case Proposal 1: Amend the PIAB Act to provide that applications to Court rule settlements may be made during the IB process, without the issue of an Authorisation, staying the IB process until the matter is ruled upon.

Minor Case Proposal 2: S35 PIAB Act ought to be amended to restrict costs of applications to those that would apply in the lowest court competent to rule on the application.

Minor Case Proposal 3: A review should be undertaken of the current system for ruling Minor claims to establish if a more simplified and cost efficient system could be adopted, consistent with the best interests of Minor claimants and other claimants under disabilities.