



31 July 2014

Ms Breda Power

Assistant Secretary

Department of Jobs, Enterprise and Innovation

Earlsfort Centre

Lower Hatch Street

Dublin 2

Re: Public consultation on the operation and implementation of the Personal Injuries Assessment Board Acts 2003 and 2007.

Dear Ms Power

Thank you for your letter dated 19th June 2014 to Dr Ambrose McLoughlin, Secretary General enclosing a notice of a public consultation in relation to the Personal Injuries Assessment Board Acts.

In relation to clinical negligence claims, the Department is in agreement with the views outlined in the detailed submission from the State Claims Agency (SCA). It is our view that there are special features associated with clinical negligence claims which necessitate that the majority are best managed within the existing tort system. This is reflected in the fact that the State found it necessary to establish the Clinical Indemnity Scheme to deal with the special circumstances associated with clinical negligence claims.

The Department, however, has no objection in principle to the assessment by the Injuries Board of clinical negligence cases where liability/causation is not in dispute. We note that the SCA has proposed that areas such as needle stick injuries and claims involving minor/moderate sequelae should be included in the scope of the work of the Board.

Any change in the current arrangements must avoid placing an unnecessary administrative burden on hospital staff. The Department notes the risk of an increase in the number of claims, should persons be attracted to a fast-track and low-cost claims assessment system for medical negligence. An increase in the number of claimants could have significant implications for resource allocation within the public hospital system, as hospitals would be required to secure, copy and transmit copies of the medical records relating to each of these

Tus Aite do
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claims for the Injuries Board, when the same information might subsequently be required by the SCA.

Since the establishment of the State's Clinical Indemnity Scheme, the State has made a significant investment in the recruitment of professional legal specialists in the area of medical negligence. This expert team now manages 85% to 90% of all clinical negligence litigation that is initiated in Ireland each year.

The SCA has a statutory brief under Section 8 of the NTMA (Amendment) Act 2000 to minimise the litigation costs associated with all claims and the Agency has introduced a number of initiatives to achieve this, including persuading the courts to award interim contingency lump sum awards in cerebral palsy cases, pending the introduction of a statutory Periodic Payment Order Scheme.

The Department is of the view that the liability and causation issues in clinical negligence claims render the majority of these claims unsuitable for a fast-track assessment process. An important reason is that medical negligence claims may also require the SCA, as insurer, admitting liability on a doctor's behalf and the attendant potential reputational damage such admission may have on a doctor's ability and right to earn a living as a doctor.

The Department would share the concerns outlined by the SCA in respect of any change that would delay the ultimate resolution of the claim, if all clinical negligence cases were first submitted to the Injuries Board: In this scenario, the delay caused would be disproportionate when compared to the small number of cases which would be deemed suitable for assessment and managed in a timely fashion under clear criteria, agreed between the SCA and the Injuries Board.

In summary, the complexities in establishing liability render the majority of clinical claims unsuitable for the assessment process applied by the Injuries Board to motor vehicle and similar claims, where it is often clear at an early stage that there is no dispute over liability.

Yours sincerely

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Principal Officer

Clinical Indemnity Unit