

## **GENERAL SCHEME**

### **PERSONAL INJURIES RESOLUTION BOARD BILL 2022**

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**PERSONAL INJURIES RESOLUTION BOARD BILL 2022**

**CHAPTER 1 – PRELIMINARY AND GENERAL**

**HEAD 1 - LONG TITLE**

To provide that the Long Title of the Bill is:

An Act to amend and extend the Personal Injuries Assessment Board Acts 2003, 2007 and 2019

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**EXPLANATORY NOTE:**

It is standard to provide each Bill with a LONG TITLE, giving detail as to its scope and purpose, as well as a succinct SHORT TITLE, providing a convenient reference thereto.

## **HEAD 2 - SHORT TITLE, COMMENCEMENT AND COLLECTIVE CITATION**

To provide that –

(1) This Act may be cited as the Personal Injuries Resolution Board Act 2022.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(3) The Personal Injuries Assessment Board Acts 2003, 2007 and 2019 and this Act may be cited together as the Personal Injuries Resolution Board Act 2022.

### **EXPLANATORY NOTE:**

It is standard to provide for a convenient Short Title, by which an Act may be generally referred to and a collective citation, as well as providing for a Long Title giving greater detail as to the scope of the Act in question.

### **HEAD 3 - INTERPRETATION**

To provide that -

In this Act -

“Principal Act” means the Personal Injuries Assessment Board Acts 2003-2019

“Minister” means the Minister for Enterprise, Trade and Employment

“the Board” means the body established by section 53A

“mediation” means a confidential, facilitative, and voluntary process in which parties to a personal injury claim, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the relevant claim.

#### **EXPLANATORY NOTE:**

This Head provides definitions of key words/terms used in the Act.

## **CHAPTER 2 – AMENDMENTS TO APPLICATION PROCESS AND FORMAL NOTICE**

### **HEAD 4 - REQUIREMENT FOR CLAIMANTS TO SUPPLY PERSONAL PUBLIC SERVICE NUMBER TO THE BOARD FOR VERIFICATION PURPOSES**

To provide that –

Section 11 of the Principal Act is amended by the insertion of the following subsections after subsection 3.

(4) On and after the commencement of the Personal Injuries Resolution Board Act 2022 and notwithstanding section 262(9) of the Social Welfare Consolidation Act 2005, a claimant shall include his or her personal public service number (or, in any case where the claimant does not have a personal public service number, such other information concerning their identity as stands determined by the Board for the purposes of this section)

(5) Any person who, without just cause, fails to comply with subsection (4) shall be guilty of an offence.

(6) In this section, ‘personal public service number’, in relation to a claimant, means—

(a) the number that has been issued to the claimant in accordance with section 262(2) of the Social Welfare Consolidation Act 2005, or

(b) the number that the claimant is entitled to have allocated and issued to him or her in accordance with that section.

#### **EXPLANATORY NOTE:**

The Personal Injuries Assessment Board is a body included in schedule 5 of the Social Welfare Act 2005 as a body that may use Personal Public Service Numbers. This Head is intended to oblige claimants to supply their PPSN to the Board when making an application for assessment under section 11. This will enable the Board to verify the identity of claimants.

Head 4 provides that claimants provide their PPSN to the Board when making an application for assessment under section 11. The requirement for proof of identity will reduce the potential for identity fraud and ensure accuracy in relation to the order to pay and payment of resolved claims.

The Department will continue to engage with the Department of Social Protection in respect of this Head. In addition, a Data Protection Impact Assessment (DPIA) will be developed by the Board and the views of the Office of the Data Protection Commissioner will be sought.

## **HEAD 5 - APPLICATION FOR RESOLUTION OF A RELEVANT CLAIM**

To provide that –

Section 11 of the Principal Act is hereby amended by the replacement of subsection (1) with the following–

(1) A claimant shall make an application under this section to the Board for an assessment to be made of his or her relevant claim under Section 20 and may apply for resolution of his or her relevant claim under Section XA (*mediation*).

### **EXPLANATORY NOTE:**

All personal injury claimants must apply to the Board in the first instance although cases can be settled between the parties directly at any stage before, during or after the Board's process. In support of their application claimants submit a completed claim form, a medical report, and a processing fee.

Section 11 of the Principal Act provides that applications for assessment under section 20 of the Act will be made in the format prescribed by the Board in rules under section 46 of the Principal Act.

This Head provides that a claimant must make an application for an assessment and that they may also opt to have a relevant claim resolved through mediation as provided under section XA.

## **HEAD 6 - NOTIFICATION OF APPLICATION TO RESPONDENT AND ASCERTAINMENT OF HIS OR HER WISHES**

To provide that –

Section 13 of the Principal Act is hereby amended by the replacement of subsection (2) with the following–

- 2) That notice under subsection (1)(b) is a notice stating that the Board has received an application made under section 11 by the claimant and requesting the respondent to state to the Board in writing, within the period specified in the notice, whether he or she consents to –
- (a) an assessment being made under section 20 of the claimant’s relevant claim, and
  - (b) mediation of the relevant claim under Section XA, where the claimant has applied for resolution of his/her relevant claim under section XA.

### **EXPLANATORY NOTE:**

Section 13 of the Principal Act provides that formal notice is issued to an identified respondent on receipt of an application under Section 11 that is accompanied by a medical report and the required fee. Section 13 also provides that preliminary notice of a claim may be notified to a respondent as soon as practicable after receipt of an application under Section 11 where a medical report and/or fee is awaited.

This Head provides that where a claimant has indicated in their application that they are willing to mediate that the notice served on the respondent under Section 13(1)(b) will seek consent from the respondent for an assessment under section 20 and will also seek consent from the respondent for mediation under Section XA.

Where a claimant does not opt for mediation, the notice served on the respondent will seek consent for assessment under section 20 only.



**HEAD 7 - PROCEDURES ON FOOT OF NOTIFICATION UNDER SECTION 13(1)(B) AND WHERE THE CLAIMANT HAS APPLIED FOR RESOLUTION OF HIS/HER RELEVANT CLAIM UNDER SECTION XA**

To provide that –

Section 14 of the Principal Act is hereby amended by the insertion of the following subsections before subsection (1) –

(1a) If a respondent states in writing, in response to a notice under section 13(1)(b) and where the claimant has applied for resolution of his/her relevant claim under section XA (mediation), within the period specified in it, that he or she does consent to mediation of the relevant claim under section XA, then the Board shall, subject to sections 17 and 18, arrange for mediation of that claim under section XA.

(1b) If a respondent-

(a) states in writing, in response to a notice under section 13(1)(b) and where the claimant has applied for resolution of his/her relevant claim under section XA, within the period specified in it, that he or she does not consent to mediation of the claimant's relevant claim under Section XA, or,

(b) fails to state in writing, in response to that notice, within the period specified in it, whether or not he or she does so consent

then the Board shall, consider under Section 14(1) the consent of the respondent to an assessment being made under section 20 of the claimant's relevant claim.

**EXPLANATORY NOTE:**

Section 14 of the Principal Act provides for the procedures to be followed in response to notification referred to in section 13. When an application is complete formal notice under Section 13(1)(b) is served on the respondent. The Board send formal notification of the claim to the person or organisation the claim is being made against (the respondent). The respondent can consent or not consent to the Board making an Assessment. Where consent is given these cases proceed to assessment under section 20 of the Principal Act. Cases not consented to have an authorisation issued under section 14 of the Principal Act which enables a claimant to proceed with their case through litigation.

This Head provides that where a claimant has consented to mediation and the respondent has been asked to consent to mediation and has provided written consent the Board shall organise for mediation under Section XA.

Where the respondent states in writing that they do not consent to mediation, then the Board shall consider if the respondent has responded to the request for consent for the Board to arrange for the making of an assessment.

Where the respondent fails to respond to the request, it will be treated as if the respondent has not consented to mediation. The Board shall, then consider the consent of the respondent to an assessment being made under section 20 of the claimant's relevant claim.

## CHAPTER 3 – MEDIATION

### HEAD 8 - MEDIATION PROCESS

To provide that –

The Principal Act is hereby amended by the insertion of –

XA (1) Notwithstanding anything in section 11, section 13, and section 14 the Board may where it considers it appropriate:

(a) invite the parties to consider mediation as a means of attempting to resolve the relevant claim.

(b) provide the parties with information about the benefits of mediation in attempting to resolve the relevant claim.

(2) The Board shall ensure that the objective of mediation is understood so as to promote engagement in the mediation process. That objective is to have the relevant claim resolved by agreement reached between the parties.

(3) Where each of the parties states that he or she consents to the relevant claim being the subject of such mediation the Board shall arrange for the matter to be the subject of mediation

(4) The Board may facilitate mediation by electronic means.

(5) Mediation of a relevant claim shall be made by such one or more employees of the Board for the time being assigned the performance of functions under this chapter as the Board directs or such persons as may be appointed under section XD. (In subsequent sections under this part referred to as the mediator).

(6) The mediator shall inquire fully into each relevant aspect of the dispute concerned, provide to, and receive from, each party such information as is appropriate and generally make such suggestions to each party and take such other actions as he or she considers appropriate with a view to achieving the objective mentioned in subsection (2)

(7) Participation in mediation by the parties is voluntary, and a party may –

(a) withdraw from mediation at any time, and,

(b) be accompanied to the mediation, and assisted by, a person (including a legal advisor) who is not a party.

(8) The Board may, abandon an attempt to resolve a relevant claim by mediation as the Board considers appropriate.

(9) Subject to subsection (11) all communications (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in

relation to an assessment made under section 20 or any proceedings before a court or otherwise.

(10) Subsection (9) shall not apply to a communication or records or notes, or both, where disclosure—

- (a) is necessary in order to implement or enforce a mediation settlement,
- (b) is necessary to prevent physical or psychological injury to a party,
- (c) is required by law,
- (d) is necessary in the interests of preventing or revealing—
  - (i) the commission of a crime (including an attempt to commit a crime),
  - (ii) the concealment of a crime, or
  - (iii) a threat to a party,

or

- (e) is sought or offered to prove or disprove a civil claim concerning the negligence or misconduct of the mediator occurring during the mediation or a complaint to a professional body concerning such negligence or misconduct.

(11) Evidence introduced into or used in mediation that is otherwise admissible or subject to discovery in proceedings shall not be or become inadmissible or protected by privilege in such proceedings solely because it was introduced into or used in mediation.

### **EXPLANATORY NOTE:**

The introduction of mediation as a new function for the Board is intended to facilitate an increase in the number of personal injury claims settled without recourse to litigation. Over 30% of claims enter expensive and lengthy litigation, not only affecting the individuals but the overall insurance environment.

Mediation through the Board will be a confidential, facilitative, and voluntary process in which parties to a personal injury claim, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the claim. The mediation option is intended to allow parties to try to reach a settlement and facilitate a resolution of the claim. The introduction of mediation, as an option within the Board offers a further opportunity to enhance the speedy non-adversarial approach of the Board's existing model.

Mediation is recognised as an effective ADR (Alternative Dispute Resolution) method and is used as a preliminary option in many different settings including the Residential Tenancies Board (RTB), the Financial Services and Pensions Ombudsman (FSPO) and the Workplace Relations Commission (WRC) where subsequent options might include for example adjudication/tribunal or in the case of an assessment by the Board.

At present the Board's services are limited to assessment only, this means all claims with any question on liability no matter how small will proceed to litigation. It is important to note that mediation is not an evidence based adjudicative process – legal matters are not determined

through mediation. A facilitated mediation by the Board would allow the parties themselves to agree on the issues they wish to mediate.

As the mediation will take place in the context of a personal injury claim arising the issues are likely to be around causation, fault/liability, compensation for this including general damages and any financial loss sustained, and the costs of taking an action. The nature of what will be mediated in a mediation process will be led by the parties themselves.

Mediation facilitates parties in settling the differences between them rather than resorting to litigation. Even if the claim cannot be wholly resolved through mediation the process could narrow the issues between parties requiring determination (where a claim between parties is partly resolved the claimant could submit a revised application setting out the aspects of the claim which remain outstanding). It is envisaged that initially the Board's current directly employed (Assistant Principal level) Statutory Assessors could be up skilled to undertake mediation work (AP is the same level which undertakes adjudication and mediation work within the WRC). Individuals would not work on an assessment and mediation of the same case.

Distinct processes/stages of the Board's mediation service (including administrative elements) would for example include application, formal notifications, consent from other party to participate, case evaluation/initial understanding of the case, position statement, information sharing, scheduling, mediation, reporting, binding order, and release (authorisation). All the administrative tasks required to support a mediation service could be undertaken by the Board's existing staff/external delivery partner and are similar to existing processes for the Board's assessment services.

Mediation will not affect the timeline for assessment of a claim. The Board will remain obliged, under section 49 of the Principal Act to assess claims within nine months of confirmation of the respondent's consent to the assessment process notwithstanding some exceptional circumstances in which the nine-month time limit can be extended.

Head 8 sets out the proposed provisions for mediation of claims.

Subsection 1 provides that while the Board may seek consent for mediation under section 11, section 13, and section 14 the Board may in addition invite the parties to consider mediation and provide the parties with information about the benefits of mediation in attempting to resolve the relevant claim at any point in the process.

Subsection 2 provides that the Board shall explain the mediation process to the parties and the objective of mediation.

Subsection 3 provides that mediation will be facilitated by a mediation officer appointed by the Board.

Subsection 4 provides that the Board may conduct mediation by electronic means.

Subsection 5 provides that the Board may appoint members of staff to be mediators.

Subsection 6 provides that participation in mediation will be voluntary for both the complainant and the respondent, that the parties may be accompanied to mediation including by a legal advisor, and that the parties may obtain independent legal advice at any time if they so wish.

Subsection 7 provides that mediation may be abandoned where the Board/Mediator considers it reasonable and appropriate. It is based on Section 58(4) of the Financial Services and Pensions Ombudsman Act 2017.

Subsection 8 imposes a general confidentiality obligation on the mediator and parties to a mediation.

Subsection 9 provides for exceptions to the obligation of confidentiality. It provides that it does not apply where disclosure is necessary to implement or enforce a mediation settlement or is otherwise required by law. Disclosure may also be justified where necessary to prevent physical or psychological injury to a party or to prevent commission or concealment of a crime.

Subsection 10 provides that evidence that would normally be admissible in proceedings does not become inadmissible solely for having been introduced in mediation. This is based on Section 10 (3) of the Mediation Act 2017.

It is envisaged that the mediation process will be held in private, and any documentation associated with mediation would be confidential and excluded from the scope of the Freedom of Information Act 2014, the Data Protection Act 2018, and the General Data Protection. Regarding Freedom of Information, it is proposed to include the Board in relation to the provision of mediation services in schedule 1 Part 1 of the Freedom of Information Act. This is provided for under Head 14.

In relation to any provision for exemption of the mediation process from Data Protection legislation it is recognised that this will need to be developed in consultation with the Office of the Data Protection Commissioner.

## **HEAD 9 - POWER OF THE BOARD TO MAKE PROCEDURAL RULES RELATING TO MEDIATION**

To provide that –

The Principal Act is hereby amended by the insertion of –

**XB (1)** Subject to the provisions of this Part, the Board shall make rules concerning the procedure to be followed under this Part.

- (2) Without prejudice to the generality of subsection (1), rules under this section may—
- (a) specify the period within which—
    - (i) a mediator must be appointed under section XD to deal with a claim referred to the Board,
    - (ii) a mediator must furnish his or her report under section XC to the Board,
    - (iii) the Board must serve the documents referred to in section XC on each of the parties
  
  - (b) specify how confidentiality of the mediation process will be observed within the Board and that a separation exists between mediation as provided for under section XA and assessment as provided under section 20.

### **EXPLANATORY NOTE:**

This Head provides that the Board may make rules relating to the operation of mediation by the Board. Providing the Board with the power to make rules will provide for consistency and transparency in how mediation will be dealt with by the Board. Section 109 of the Residential Tenancies Board Act 2004 served as the precedent.

Head 9 provides that the Board will have the discretion to determine the relevant rules which may include rules relating to the relevant timeframes for stages of the process. The Board will also set out procedures to ensure the confidentiality of the mediation process is observed and that a necessary separation exists between the Board’s mediation process and assessment process.

## HEAD 10 - MEDIATION OUTCOME

To provide that –

The Principal Act is hereby amended by the insertion of –

XC (1) As soon as practicable after the mediation is completed, the mediator shall prepare a report containing the following—

- (a) a statement of what matters, if any, relating to the dispute are agreed by the parties to be fact,
  - (b) a summary of the matter or matters, if any, whether they go in whole or part to resolving the dispute or not, agreed to by the parties (and this summary shall be contained in a document signed by each of the parties acknowledging that the matter or those matters are agreed to by them), and
  - (c) relevant particulars in relation to the conduct of the mediation (including particulars in relation to the number and duration of sessions held by the mediator and the persons who participated in any such session), and a list of any documents submitted to the mediator (but without disclosing any of their contents).
- (2) The mediator shall, after preparing a report under subsection (1), furnish a copy of it to the Board.
- (3) Notwithstanding that, following a mediation, the parties have signed an agreement that resolves the dispute concerned, each of the parties may, not later than 10 days from the completion of the mediation concerned, notify the mediator and the Board in writing that he or she no longer agrees with that agreement and does not wish to be bound by it.
- (4) In this section, the ‘date of the completion of the mediation’ means—
- (a) the date that the document referred to in subsection (1)(b) is signed by each of the parties, or
  - (b) where the document is signed by the parties on different dates, the later of those dates.
- (5) Where —
- (a) the report furnished to the Board under sub-section (2) states that there is agreement between the parties and that the agreement resolves the relevant claim,
  - (b) a period of 10 days has elapsed from the date of the completion of the mediation, and
  - (c) in that period none of the parties has informed the Board that he or she no longer accepts that agreement.

the Board shall proceed to issue an order to pay pursuant to section 38 of the Act for the monetary amount, if any, which the respondent has agreed to pay to the claimant.

(6) Where an order to pay has issued under subsection (5) the Board shall not issue a document referred to in this act as an “authorisation”.

(7) Where an attempt to resolve a relevant claim by mediation is unsuccessful, or if any of the parties under subsection (3) responds by stating that he or she does not wish to be bound by the agreement, and where the respondent has given consent under section 14 (1), the Board shall refer the relevant claim for assessment under section 20.

(8) Notwithstanding subsection (7) –

(a) a claimant may withdraw the relevant claim under Section 47(1) or

(b) the Board may not arrange for the making of an assessment under Section 17(1) (vii,) or

(c) the Board may arrange for the making of an assessment under Section 20 where the respondent has notified the Board of their consent for an assessment.

### **EXPLANATORY NOTE:**

This Head sets out the provisions in relation to the outcome of mediation.

Mediation is a confidential process. The report, acknowledging the confidentiality requirement, will be brief and summarise work undertaken, detail where matters have gotten to in the mediation and will ultimately enable the Board to further process/administer the case (for example, proceed on to assessment, issue orders etc.). This is standard in statutory mediation. The Board has a responsibility to manage claims, and be accountable for the work it undertakes, the reports are also vital in terms of monitoring performance. As provided for in Head 11, it is possible that both the Board’s staff or a member of an external panel can mediate cases and therefore it is important to account for work being undertaken in the mediation process. Where a case proceeds to the making of an assessment claims handlers/assessors will not have access to the mediation files.

Ensuring that the confidentiality of the mediation process is observed and that the necessary separation exists between the mediation process and assessment process will be set out by the Board through procedural rules as provided for under section XB.

Where the parties have agreed matters to resolve the claim, the parties will have 10 working days (cooling off period) in which to formally notify the Board of any subsequent dissent with the report. In the absence of any dissent being notified, the claim will be deemed to have been resolved in full and the Board shall proceed to issue an order to pay pursuant to section 38 of the Principal Act. The issue of an order to pay also denotes the claim as closed and finalised and the agreement reached is binding. The Board shall not issue any authorisation under section XC (4) for the claim to be taken to court.

Where mediation is not successful, and (where the respondent has given consent for assessment or has failed to respond) the Board shall refer the relevant claim for assessment under Section 20 of the Act.

Notwithstanding that a respondent has provided consent for an assessment following the formal notice the Head also provides that following an unsuccessful meditation a claimant may choose to withdraw their claim. It also provides that where the mediation is unsuccessful a respondent



may notify the Board of their intention to not accept an assessment when made and the Board can release the claim, issuing an authorisation to a claimant.

The Head also provides that following an unsuccessful mediation where a respondent had previously not given consent to an assessment but now wishes to give consent that the Board will arrange for the making of an assessment.

Head 11 is based on section 94 of the Residential Tenancies Act 2004.

## **HEAD 11 - APPOINTMENT OF MEDIATORS**

To provide that –

The Principal Act is hereby amended by the insertion of –

XD (1) Notwithstanding XA (3) the Board may from time to time appoint such and so many persons who shall be known and are in this Act referred to as “mediators” to carry out the functions assigned to them by the Board in accordance with Section XA.

- (2) The Board may form a panel comprising the names of the persons who stand appointed as mediators.
- (3) Mediators shall be appointed for such period (not being less than 3 years) as the Board may determine and shall be paid such fees and expenses as the Board, with the consent of the Minister and of the Minister for Public Expenditure and Reform may determine from time to time; the other terms and conditions on which each of them shall stand appointed shall be such as the Board may determine from time to time.
- (4) A mediator may at any time resign from his or her appointment as mediator.
- (5) The Board may for valid reasons revoke an appointment under this section.
- (6) Neither the Civil Service Commissioners Act 1956 (or any enactment that replaces in whole or in part that Act) nor the Civil Service Regulation Acts 1956 to 1996 shall apply to a mediator.

### **EXPLANATORY NOTE:**

While it is envisaged that the skills and experience of the existing staff of the Board may be utilised and appointed as mediation officers to provide the mediation service, Head 10 provides the Board may from time to time appoint mediators who are not employees of the Board and form a panel of mediators. It is based on section 164 of the Residential Tenancies Act 2004.

Mediation training and/or a mediation qualification will be required for the Board’s staff to carry out mediation. Training on mediation in the context of the Board may involve an element of in-house bespoke training as is the case with many of the other statutory bodies undertaking a mediation role such as the Residential Tenancies Board and the Financial Services and Pensions Ombudsman. It is intended that in the main it will be the Board’s statutory assessors who will carry out this function, all of whom have significant experience in assessing claims and have a significant background in claims assessment and handling and some of whom have legal qualifications, and all are familiar with the issues which can arise in the context of a personal injury claim.

## **HEAD 12 – PROVISIONS RELATING TO MEDIATORS**

To provide that –

The Principal Act is hereby amended by the insertion of –

XE (1) In respect of a matter dealt with by him or her under this Chapter, the mediator shall—

(a) declare to the parties at the outset of dealing with the matter any potential conflict of interest of which he or she is aware or ought to reasonably be aware,

(b) maintain the confidentiality of the proceedings concerned and shall not disclose any report prepared by him or her under section XC otherwise than in accordance with those sections.

(2) Where a declaration referred to in subsection (1)(a) is made to the parties then, unless the parties agree to the mediator continuing to deal with the matter, the Board shall appoint another person appointed under section XA (5) to deal with the matter.

(3) Subject to any rules under section XB the manner in which a mediation is conducted shall be at the discretion of the mediator concerned but it shall be the duty of that person to ensure that the mediation is conducted without undue formality

### **EXPLANATORY NOTE:**

Head 12 imposes certain requirements on mediators in relation to the disclosure of conflicts of interests and the maintenance of the absolute confidentiality of the proceedings. It is based on section 101 of the Residential Tenancies Board Act 2004.

This Head provides that when undertaking mediation, the relevant mediator will disclose any potential conflict of interest that he or she is aware of. Where a mediator has declared there to be a potential conflict of interest, it is a matter for the parties to agree whether the mediator should continue dealing with the matter. Where the parties do not agree with the mediator remaining in place the Board will appointment a replacement either from their internal employees who can act as a mediator or from the mediator panel under Section XD. The mediator is responsible for the way a mediation is conducted but must maintain the confidentiality of mediation.

## **HEAD 13 - ENFORCEABILITY OF MEDIATION**

To provide that –

Section 38 of the Principal Act is hereby amended by the substitution of

“assessment”

with

“assessment or agreement under Section XC (4)

### **EXPLANATORY NOTE:**

Section 38 of the Principal Act provides that where assessments are accepted the Board will issue an order to pay to the respondent. The Head provides that following an agreement reached by the parties in mediation and where an order to pay has issued this order to pay will be enforceable in the same manner as an assessment under the Act.

Where an agreement is reached via mediation and an order to pay has issued, the agreement is binding on both parties. This is a statutory bar on bringing proceedings save in the case of enforcing the terms of the mediation agreement. An order to pay has the same standing as if it were a judgement of court, under Section 40 of the Act, and the personal injury claim is considered settled. Any failure to fulfil the order to pay can be pursued as a debt recovery case. It is not open to either party to reopen the personal injury claim.

## **HEAD 14 – AMENDMENT TO THE FREEDOM OF INFORMATION ACT**

To provide that –

Part 1 of Schedule 1 to the Freedom of Information Act 2014 is amended, on and from the commencement of this section, by inserting after paragraph (am) the following:

“(an) the Personal Injuries Resolution Board, insofar as it relates to records concerning the mediation carried out by the Personal Injuries Resolution Board under the Personal Injuries Resolution Board Act 2022 (*No. \_\_\_\_ of 2022*);”.

### **EXPLANATORY NOTE:**

Mediation is recognised as an effective dispute resolution method and is used as a preliminary option in many different settings including the Residential Tenancies Board (RTB), the Financial Services and Pensions Ombudsman (FSPO) and the Workplace Relations Commission (WRC) where subsequent options might include for example adjudication/tribunal or in the case of an assessment made by the Board

It is envisaged that the mediation process will be held in private, and any documentation associated with mediation would be confidential and excluded from the scope of the Freedom of Information Act 2014

This Head provides for the exclusion of the mediation process within the Board from the provisions of the Freedom of Information Act. This follows the provisions in Schedule 1 Part 1 that Act that excludes mediation by the FSPO and the WRC. It will be progressed in consultation with the Department of Public Expenditure and Reform.

## **CHAPTER 4 – AMENDMENTS TO DISCRETIONS PROVIDED IN THE PRINCIPAL ACT**

### **HEAD 15 - AMENDMENT TO SECTION 17 OF THE PRINCIPAL ACT**

To provide that –

Section 17 of the Principal Act is hereby amended by the deletion of –

subsection (1)(ii) (II), and

subsection (1)(iii),

#### **EXPLANATORY NOTE:**

This Head amends two discretionary provisions in section 17 of the Principal Act. Firstly, subsection (1)(ii)(II) is deleted as it is considered this provision is no longer required. It has been the Board's practice since establishment to exercise the discretion provided for in this subsection and not make an assessment for cases consisting wholly of psychological damage. As the Personal Injury Guidelines provide detail on the level of awards relevant to injuries of a psychological nature assessments of claims consisting wholly of psychological injury may now be assessed as are all other relevant claims under the provisions of Section 20. This is intended to increase the number of personal injury claims that can be resolved through the Board as opposed to litigation.

Some cases that consist of a wholly psychological injury may not be appropriate to be assessed by the Board, for those cases other provisions under Section 17 may apply.

Secondly, sub-section (1)(iii) is deleted. This removes the Board's discretion not to undertake an assessment where the time to establish a prognosis would result in the timeframe for assessment under Section 49 of the Principal Act not being met. Provisions proposed under Head 16 provide for an alternative approach. This is intended to increase the number of personal injury claims that can be resolved through the Board as opposed to litigation.

## **HEAD 16 - ASSESSMENT OF RELEVANT CLAIMS WHERE LONG-TERM PROGNOSIS IS AWAITED**

To provide that –

The Principal Act is hereby amended by the insertion of the following section after section 49

–

49A (1) Without prejudice to Section (49), where it appears to the Board from:

- a) a report referred to under Section 11(3)(c) or
- b) a medical examination under Section 24(2)

that it will not be possible or appropriate, because of the period of time required for a long term prognosis in respect of the personal injury or injuries to which the relevant claim relates to be made, to make an assessment in respect of the relevant claim within the period referred to in section 49(4), the Board shall, by notice in writing served on the claimant and the respondent or respondents before the expiration of the period referred to in section 49(4), inform each of them of the reasons why it would not be possible or appropriate (as the case may be) to make the assessment within that period.

(2) Where a notice has been served under subsection (1), that notice shall specify the period, determined by the Board having regard to the medical examination undertaken under subsection (1), within which a further medical examination under section 24(2) will be undertaken.

(3) It shall be the duty of the Board to arrange a new medical examination under section 24(2) within the period specified in subsection (2).

(4) Where the medical examination under subsection (3) has been completed and a long-term prognosis in respect of the personal injury or injuries to which the relevant claim relates to be made has not been determined, the Board shall, by notice in writing served on the claimant and the respondent or respondents inform each of them of that fact.

(5) Where a notice has been served under subsection (4), then unless the claimant and respondent consent in writing to the Board's continuing to deal with the matter or opt to resolve the relevant claim through mediation it shall be the duty of the Board to issue to the claimant a document that contains the statement and operates to have the effect mentioned in subsection (10).

(6) Where the period determined by the Board under subsection (2) is such that it would not be possible or appropriate (as the case may be) to make the assessment within that period two years, following the expiration of the period referred to in section 49(4), it shall be the duty of the Board to issue d by notice in writing served on the claimant and the respondent or respondents informing each of them of the reasons why it would not be possible or appropriate (as the case may be) to make the assessment.

(7) Where notice has been served under subsection (6) than unless the claimant and respondent consent in writing to the Board continuing to deal with the claim it shall be the duty of the Board to issue to the claimant a document that contains the statement and operates to have the effect mentioned in subsection (10).

(8) Without prejudice to subsection (1) where it appears to the Board that it will not be possible to make an assessment in respect of the relevant claim then the Board shall, by notice in writing served on the claimant and the respondent or respondents, issue to the claimant a document that contains the statement and operates to have the effect mentioned in subsection (10).

(9) Such a document is also referred to in this Act as an “authorisation”.

(10) An authorisation under this section shall state that the claimant is authorised to, and operate to authorise the claimant to, bring proceedings in respect of his or her relevant claim.

### **EXPLANATORY NOTE:**

Head 16 is intended to increase the number of personal injury claims that can be resolved through the Board.

There are a significant number of cases (between 1500 and 2000) released ever year by the Board where the prognosis for a claimant has not or cannot be fully determined within the statutory timeframes for assessment. For cases where the timeframe for assessment cannot be met, the Board can only retain such cases with the consent of the claimant and by extending the assessment timeline (section 49 of the Principal Act refers).

Section 49 of the Principal Act provides for the making of assessments by the Board within specific time limits. The Board must assess claims within nine months of confirmation of the respondent’s consent to the assessment process which can be extended by six months. If the assessment is not made before that date, then unless the claimant consents in writing to the Board's continuing to deal with the matter, the Board will issue an authorisation.

Many of these cases will have a prognosis in the future and may be awaiting a further medical investigation before such a prognosis can be made available. These cases are being released into the litigation system, but a court will also not have access to a long-term prognosis to fully assess the claim. Given the additional cost and time it takes to deal with cases through a litigation model,

Where an injury prognosis is not yet available the courts will face the same difficulties in dealing with the case, regardless of the fact that it has been released from the Board’s process, until an injury prognosis is available. On that basis there are time and cost benefits to claimants and respondents of having the case dealt with through the Board. These cases will take longer to resolve through the Board, but equally will take longer to be dealt with through litigation. Given that the Courts are likely to face the same difficulties in dealing with the case until a prognosis is available and the considerable extra costs in proceeding to litigation there are likely to be benefits to extending the timeframe for the Board to assess these cases.

Currently the Principal Act provides for an extension beyond 15 months with the consent of the claimant. It is proposed to provide that the Board shall arrange further medical examinations under section 24(2) within an appropriate time to allow for the making of an assessment (subject to a maximum of two years) as indicated by the medical examination undertaken under subsection (1).

In *Clarke v O’Gorman* (2014) before the Supreme Court, Mr Justice O’Donnell noted that the authorisation regime operated under 2003 Act amounts to “a limitation on the unspecified



personal right of access to the courts to litigate those claims guaranteed by Article 40.3 of the Constitution.” He also noted later in the decision that this limitation of a constitutional right seeks to “achieve a public interest, it is structured as an assistance to litigants by providing an early opportunity for an independent valuation of the case which may facilitate its resolution by settlement.”

The inclusion of specified timeframes within which the Board’s assessment must be made is intended to address the proportionality of interfering with a claimant’s rights to access the courts. These timeframes exist to preserve the right of access to the courts however, most of these cases dealt with under this Head ultimately cannot be assessed as the nature of the long-term impact of the injuries cannot yet be determined. Therefore, releasing the cases to the courts will not allow them to proceed any further, at least in the short term.

The extension that is being proposed is being limited specifically to cases where a medical prognosis cannot yet be determined, and therefore the extension is limited in nature. The public interest and given the proportionality of the interference, concerns regarding the broader interference with access to justice will need to be considered.

The proposed provisions will allow an additional extension for cases where, based on the medical evidence following further medical examinations, the prognosis cannot be determined within the statutory assessment timelines but are capable of prognosis at a point in the future to be retained in the Board’s process with the consent of the parties either for an attempt at resolution through mediation or until such time as the injury can be assessed within an additional 18 months.

Where the parties do not consent, the case will be released. Where it is determined that no prognosis can be made due to the nature of injury, and an assessment cannot be completed the case will be authorised for release.

It is recognised that there is an important balance to be struck between the right of access to the courts and the public interest in providing a cost-effective settlement channel for personal injury claims through the Board. This Head and in particular the timeframe for the Board to retain a claim will require careful deliberation and consideration with the Office of the Attorney General and the Office of the Parliamentary Counsel during drafting.

## **HEAD 17 – AMENDMENT TO SECTION 50**

To provide that –

Section 50 of the Principal Act is hereby amended by the replacement of –

“36 or 49”

by

“36, 49 or 49A”

### **EXPLANATORY NOTE:**

Head 17 provides for an extension to the statutory timeframes for claims where a long-term prognosis is not available in order for an assessment to be made within the timeframes provided for in Section 49.

Section 50 pauses the statute of limitations for claims before the Board until six months following the issuing of an authorisation by the Board. This Head provides for an amendment to Section 50 to include an authorisation issued under the Section 49A provided for under Head 6 of the Bill.

## **CHAPTER 5 – FEES AND RECOVERY OF SAME**

### **HEAD 18 - POWER OF THE BOARD TO IMPOSE CHARGES WITH THE CONSENT OF THE MINISTER**

To provide that –

Section 22 of the Principal Act is hereby amended by the deletion of subsection (1) and the insertion of the following section.

22 (1) The Board may, with the consent of the Minister, and if directed by the Minister to do so, make regulations enabling the Board to impose the charges referred to in subsection (2) in respect of the dealing by the Board with an application under section 11 in relation to a relevant claim.

#### **EXPLANATORY NOTE:**

This Head amends section 22(1) of the Principal Act to provide that the Board with the consent of the Minister may make regulations to impose charges.

The Board operates based on fees charged to claimants and respondents. In its first two years of operations (2004/2005) it benefitted from Government grants, but since then has been fully self-funding and repaid the initial grants to the Exchequer. As section 65 of the Principal Act provides that the Chief Executive is accountable to the Committee of Public Accounts for the economy and efficiency of the Board in the use of its resources it is considered appropriate that the Board is empowered to set and impose charges, with the consent of the Minister.

Precedents for the Board imposing charges by regulations with the consent of the Minister include section 20 of the Personal Insolvency Act 2012 and section 176 of the Residential Tenancies Act 2012.

## **HEAD 19 - POWER TO RECOVER CHARGES FROM A NON-RESPONDING RESPONDENT**

To provide that –

Section 14 of the Principal Act is hereby amended by –

The insertion of the following new subsections:

(2A) A respondent referred to in section 1 shall be liable to the Board for any and all charges incurred by the Board pursuant to regulations made under section 22 of this Act.

(5) If a party fails, refuses or neglects to pay the charges referred to in section 2A and proceedings are issued to recover these charges the Court may, in its discretion, order the party who refused to make said payment to pay all or a portion of the costs of the other party or parties.

### **EXPLANATORY NOTE:**

Section 14 of the Principal Act provides that where a respondent gives written consent to the Board or in the absence of a written notice of non-consent from a respondent the Board will arrange for the making of an assessment. Cases have arisen where the resulting respondent fee owing to the Board for the making of an assessment is not paid by the relevant respondent.

Head 19 proposes amendments to clearly set out that the respondent, who has given consent or has failed to give written notice of no consent, is liable to the Board for those charges set out in regulations under Section 22 of the Act.

In addition, where the Board seeks to recover these charges as a simple contract debt under Section 22(6), the Court will have the discretion to award costs against the respondent.

## **HEAD 20 - POWER TO IMPOSE ADDITIONAL CHARGES ON LATE PAYMENTS**

To provide that –

Section 22 of the Principal Act is hereby amended by –

The insertion of the following subsections in (2) –

(BA) a charge on the respondent or, as the case may be, each of the respondents of an amount specified in those regulations for failure to pay within the specified timeframe, as provided for by rules under section 22.

And the insertion of the following subsection after (6):

(6A) Any amount of charges imposed pursuant to regulations under subsection (1) shall be included in the order to pay pursuant to section 38 (2A) and shall be payable to the Board.

And the substitution of subsection (6) with the following –

(6) Notwithstanding the provisions of subsection 6A, any amount of charges imposed pursuant to regulations under subsection (1) may be recovered by the Board from the person concerned as a simple contract debt in any court of competent jurisdiction.

### **EXPLANATORY NOTE:**

Section 22 of the Principal Act gives the Board the power to levy charges. Heads 15 amends section 22 by inserting new provisions that the Board may apply an additional charge on a respondent that does not pay the respondent fee within a specified time frame. This is intended to act as a disincentive to not pay the relevant charge in time and to encourage compliance with the Act. In recognition that there will be an additional administrative burden in pursuing charges owing, it is considered appropriate to apply an additional charge on a respondent that does not pay the respondent charge within a specified time frame as may be provided for by rules under section 22. This is intended to act a disincentive to not pay the relevant charge in time.

Where an assessment is completed and both claimant and respondent accept the assessment recovery of any outstanding charges owing by the respondent to the should be included in the order to pay provided for under Section 38.

This Head also provides that any amount of charges imposed may be recovered by the Board as a simple contract debt in court.

## **HEAD 21 - POWER TO RECOVER OUTSTANDING FEES TO THE BOARD**

To provide that –

Section 38 of the Principal Act is hereby amended by –

The insertion of the following subsections in (2):

(c) the amount of charges payable to the Board by the respondent or, as the case may be, each of the respondents pursuant to section 22.

### **EXPLANATORY NOTE:**

Section 38 of the Principal Act provides for the issuing of an order to pay following the acceptance of an assessment by both claimant and respondent. This Head provides that the respondent is liable to pay to the claimant the amount of damages specified in the assessment, less the amount of any recoverable benefits identified to the Minister for Social Protection. It also provides for the payment by the respondent of any expenses of the claimant under Section 44 and/or Section 45 of the Primary Act.

The Principal Act does not currently provide in the Order to Pay for the recovery of outstanding charges due to the Board from the respondent. Certain practices have been noted by the Board where parties have not complied fully with the Board's processes and the Board is unable to fulfil its original mandate which was to limit the cost of administering personal injury claims, where appropriate, in the common good. Including any outstanding charges to the Board would allow the Board to recover the charge on the respondent associated with making an assessment.

## **CHAPTER 6 – COSTS IN PROCEEDINGS WHERE ASSESSMENT NOT ACCEPTED BY CLAIMANT**

### **HEAD 22 – AMENDMENT TO 51A WITH REGARD TO COSTS WHERE ASSESSMENT NOT ACCEPTED BY CLAIMANT**

To provide that –

The Principal Act is hereby amended by amendment of Section 51A by the replacement of subsection 3(3)(b) with the following:

- (b) where the amount of damages (if any) awarded on foot of those proceedings does not exceed the amount of the assessment referred to in *subsection (2)*, the court, in those proceedings, shall order the claimant to pay all or a portion of the costs of the defendant or defendants unless, for reasons that the court shall state in its decision, so doing would result in injustice being done.

#### **EXPLANATORY NOTE:**

The Principal Act was amended by the Personal Injuries Assessment Board (Amendment) Act 2007 which inserted Section 51A, 51B and 51C into the Principal Act. The purpose of the amending Act was to provide in certain circumstance where a claimant rejects the Board's assessment that has been accepted by a respondent and where they fail in any subsequent proceedings to get more than the amount of the Board's assessment, they would be entitled to legal costs.

Section 51A provides that where a claimant rejects a Board assessment that has been accepted by a respondent and where they fail in any subsequent proceedings to get more than the amount of the Board's assessment, the court may not award them their costs and may order them to pay the costs or part thereof, of the respondent.

A defendant, where litigation commences, may make a lodgement to court as a potential settlement of a claim. Where a court award is not in excess of this lodgement the plaintiff is liable for both their own and the defendant's costs from the date of the lodgement. Costs incurred prior to the making of the lodgement, including the costs involved in commencing litigation are exclude from this liability.

Head 22 provides that where a claimant rejects a Board assessment, the respondent accepts the assessment and where the court award does not exceed the Board's assessment, the court will hold the claimant liable for the respondent's costs in defending the litigation. The Head provides that this is the default position unless the court determines that holding this position would result in an injustice.

The discretion provided here is modelled on the discretion provided to the court in Section 26 of the Civil Liability and Courts Act 2004 where the court is required to dismiss a case where a plaintiff gives false or misleading evidence unless to do so would result in injustice.

The introduction of the Personal Injury Guidelines sets new levels for personal injury compensation awards in Ireland and change the amounts of general damages to be awarded by the Courts and by the Board. The Guidelines reduce award levels for most categories of personal injury and will be used by both the Board and the courts to assess compensation in such claims. This should bring greater consistency and transparency to the level of award associated with a particular injury whether claims are settled through the Board or the courts.

The third annual Motor Insurance Report of the National Claims Information Database by the Central Bank shows that in terms of injury claim settlements for claims settled between 2019 and 2020 only 2% settled via litigation with a court award. Encouraging greater use of the Board should see costs in the personal injury environment reduce alongside the decrease in award levels as a result of the Guidelines. The Central Bank's reporting under the National Claims Information Database highlights why this approach may be beneficial to the public good. It shows the legal costs associated with settling these claims through litigation were €16,064. This compares to legal costs under the Board of only €841. The time taken to resolve claims with the litigation model is 4.2 years to settle with claims settled through the Board taking 2.3 years.

With the introduction of the Personal Injury Guidelines a claim, that has been assessed by the Board but then proceeds to court, will be considered by the courts using the same criteria and award levels used by the Board. The obligation on the part of the trial judge to have regard to the Guidelines is mandatory as is his or her obligation, should he or she consider that the justice of the case warrants an award above the level of damages proposed for that or a similar injury in the Guidelines, to state his or her reasons for so departing. Given this consistency introduced by the Guidelines, this Head is intended to provide an incentive to increase the acceptance of Board assessments and reduce the number of claims preceding into litigation.

This Head is intended to narrow the discretion provided regarding costs in order to increase the incentive for settlement of a claim within the procedures offered by the Board. This should enable the claimant and respondent to settle the matter at an early point in the proceedings and reduce exposure to costs. Whether or not a claimant has a liability for these costs will be in the sole discretion of the court. This is a policy approach which is consistent with and intended to enhance the Board's principal function in the public good which is to ensure certain classes of personal injury claim can be settled without the need for many of the costs associated with litigation.



## **CHAPTER 7 – CHANGE OF NAME, ADDITIONAL FUNCTIONS AND REPORTING**

### **HEAD 23 - NAME CHANGE**

To provide that –

The Principal Act is hereby amended by the insertion of the following section after section 53–

53A(1) The name of the board (established by section 53 of the Principal Act) the present name of which is the Personal Injuries Assessment Board shall be An Bord Réitigh Díobhálacha Pearsanta or, in the English language, the Personal Injuries Resolution Board (in this Act referred to as “the Board”).

(2) References in any enactment, statutory instrument or legal proceedings or any other document to the Personal Injuries Assessment Board shall, on and from the commencement of this section, be read as references to the Personal Injuries Resolution Board.

#### **EXPLANATORY NOTE:**

Head 23 provides that the Personal Injuries Assessment Board be changed to the Personal Injuries Resolution Board.

The General Scheme seeks to place increased emphasis on the function of the Board as means of efficiently and effectively resolving claims for personal injuries through mediation and/or assessment without recourse to litigation. It also seeks to raise awareness of and to promote of the Board as means of resolving personal injury claims. Many responses to the public consultation highlighted the need for the Board to increase awareness and communicate the benefits of its service.

The change of name is intended to ensure that there is greater awareness of the Boards enhanced role and in recognition of the Board’s new functions including assessing Garda compensation claims and its enhanced resolution function.

This Head is modelled on section 8 of the Greyhound Racing Board Act 2019.

## **HEAD 24 - FUNCTIONS OF THE BOARD**

To provide that –

Section 54 of the Principal Act is hereby amended by –

The insertion of the following new subsections before subsection (1)(a):

- (aa) to facilitate resolution of relevant claims by mediation under Section XX
- (da) to collect and publish information relating to personal injury claims including information concerning personal injury awards under the Personal Injuries Guidelines,
- (db) to, as it considers appropriate, conduct or commission research, studies and analysis on matters relating to the functions of the Board and may collect and compile information for that purpose, and publish, in the form and manner that the Board thinks fit, such findings as it considers appropriate,
- (dc) To promote public awareness and conduct public information campaigns in relation to the work of the Board.

### **EXPLANATORY NOTE:**

Head 24 amends section 54 of the Principal Act and provides for 4 new functions to be accorded to the Board. Firstly, it provides that a function of the Board shall be to facilitate the resolution of relevant claims through mediation. The objective is to enable the Board to promote mediation as a viable, effective, and efficient alternative to litigation, thereby reducing legal costs, and speeding up the resolution of personal injury claims. An advantage of mediation is the ability for parties facilitated by a neutral, independent third party to get speedy access to a process that may produce a satisfactory outcome for the parties in a short space of time.

The Head also provides that functions of the Board shall be to collect and provide information relating to personal injuries and awards under the Personal Injury Guidelines, and as it considers appropriate, conduct or commission research, studies and analysis on matters relating to the functions of the Board and to collect and compile information for that purpose.

Regular data collection and reporting would facilitate greater transparency and identify trends in injuries which could be used to prevent accidents, fraud and to inform personal injuries and insurance policy. The Board has substantial amounts of data relating to personal injury claims. With the collection of additional data, the Board could be an even more important resource in providing timely data in this area. This additional data collection and reporting would be for the purposes of promoting greater transparency, educating, and creating an awareness of the Board's services, using data and information to prevent accidents and to inform policy. It is envisaged that the Board would produce reports and publish data. This data should complement the NCID report and would be more granular and specific to the personal injuries area. However, to do this in the most effective way possible the Board would need to improve the

quality of the data it collects along with supporting legislative amendments. Using anonymised/aggregated data the Board will publish periodic reports of market/stakeholder interest. The Board would only publish information which did not identify any person.

The Board has already started classifying injury by referring to the World Health Organisation's ICD-10 medical coding system. However, as well as understanding more about the relationship between award and injury, it is important to focus on preventing accidents occurring in the first place. Reducing the number of accidents is an important function in terms of reducing claims costs. In 2019, the Board produced detailed data in relation to accidents and injury. It is recommended that this is extended to a periodic publication of data in this area and that the Board be empowered to collect more extensive data relating to the accidents themselves. Data and Research in this area is an important tool in understanding and influencing the area and a key tool in encouraging competition, informing policy, and preventing accidents and claims.

The Head also provides that a new function of the Board is promote public awareness and conduct public information campaigns in relation to the work of the Board. Responses to the public consultation highlighted the need for the Board to take a proactive approach to promoting and communicating the benefits of resolving claims through the Board and the work of the Board.

## **HEAD 25 - REQUIRING CERTAIN PERSONS TO PROVIDE INFORMATION**

To provide that –

Section 54A of the Principal Act is amended by the deletion of subsection (1) and the insertion of the following section.

54A (1) The Board may require any person (including a Minister of the Government, or a body established by or under any enactment) to provide it with such records, documents, or information as it may reasonably require for the purposes of the performance of its functions under paragraph (c), (d) (e), (da) and (db) of section 54(1).

### **EXPLANATORY NOTE:**

Section 54A provides that the Board may require bodies to supply information to the Board. Head 25 proposes to amend the Principal Act to provide those new functions of the Board shall include collecting and providing information relating to personal injuries and awards under the Personal Injury Guidelines, and as it considers appropriate, conducting or commissioning research, studies and analysis on matters relating to the functions of the Board and to collect and compile information for that purpose. This Head is intended to provide that the Board has the power to undertake these additional statutory functions.

## **HEAD 26 - BOARD SHALL REPORT AS REQUIRED**

To provide that –

the Principal Act is hereby amended by the insertion of –

73A (1) Subject to subsection (2), and section 73 the Board shall provide the Minister with such information as the Minister may from time to time require about the performance of the Board's functions,

(2) The Board shall not be required to provide the Minister with information, if the provision of the information or the answering of the question would, in the Board's opinion, be likely to prejudice the performance of the Board's functions.

### **EXPLANATORY NOTE:**

Head 26 provides that the Board shall provide the Minister with information about the performance of the Board's functions. Responses to the public consultation indicated the potential benefits of and the importance of utilising the Board's data and research in terms of policy development.

This Head provides a means by which the Minister may request information from the Board as appropriate. It is modelled on Section 955 of the Companies Act 2014 and section 38 (9) of the Broadcasting Act 2009 and provides for reporting to the Minister as appropriate.

## **HEAD 27 - DISCLOSURE OF INFORMATION RELATING TO OFFENCES**

To provide that –

Section 73 of the Principal Act is hereby amended by the insertion of the following subsection –

(6) Nothing in subsection (1) shall prevent the disclosure of information to any member of the Garda Síochána if that information, in the opinion of the Board, or a member of staff of the Board, may relate to the commission of an offence other than an offence under this Act.

### **EXPLANATORY NOTE:**

Head 27 is intended to provide the Board with a mechanism to report suspected offences such as fraud to An Garda Síochána. The Cost of Insurance Working Group identified the potential for cooperation between An Garda Síochána and the insurance sector in relation to insurance fraud investigation. Several submissions to the public consultation suggested that the Board should pass on any suspected fraudulent cases to An Garda Síochána.

In addition, it is noted that Head 24 proposes a new function of the Board to, as it considers appropriate, conduct or commission research, studies and analysis on matters relating to the functions of the Board and may collect and compile information for that purpose. Regular data collection and reporting would facilitate greater transparency and identify trends in injuries which could be used to prevent accidents, fraud and to inform personal injuries and insurance policy.

This Head provides that the Board may disclose information to any member of the Garda Síochána if that information, in the opinion of the Board may relate to the commission of an offence other than an offence under the Principal Act.