



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Post Enactment Report

Personal Injuries Resolution Board Act 2022

December 2023



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Personal Injuries Resolution Board Act 2022

Background and Purpose

The Programme for Government: Our Shared Future (PfG), published on 29 October 2020 and last updated on 7 April 2021, provides for an ambitious insurance reform programme. The goal set out in the PfG regarding the PIAB is to “tackle insurance costs by enhancing and reforming the role of the Personal Injuries Assessment Board.”

To support the insurance reform agenda the Government established a Sub-Group on Insurance Reform within the Cabinet Committee on Economic Recovery and Investment (CCERI). The first task of the Sub-Group was the development of an Action Plan for Insurance Reform to reflect the commitments made in the PfG and the associated timeframes for delivery of the commitments. The Government adopted the **Action Plan on Insurance Reform on 8 December 2020**.

Action 19 of the Action Plan provides for an enhanced role for the PIAB through:

- Increasing the capacity of the PIAB
- Introducing greater anti-fraud measures into the PIAB process, and
- Expanding the PIAB’s remit in terms of research, information gathering and awareness raising, and the delivery of legislative proposals to this effect.

The Department of Enterprise Trade and Employment with responsibility for the PIAB developed, in consultation with PIAB, the General Scheme of the Personal Injuries Resolution Bill. The General Scheme was published in February 2022 and underwent Pre-legislative scrutiny by the Oireachtas Committee on Business, Enterprise and Innovation in March 2022. The report of the Joint Committee was published in July 2022 and the Personal Injuries Resolution Board Bill was published in August 2022.

This has been addressed in the Personal Injuries Resolution Board Act 2022 (the Act) under three pillars:

1. Increasing the capacity of the PIAB

The reform and enhancement of the PIAB through the Act has been designed to encourage more claimants and respondents to avail of the Board’s model to settle injury claims more quickly and less costly and contribute to reductions in insurance premiums.

2. The introduction of anti-fraud measures and addressing the issue of legal costs

It was considered necessary to make the PIAB process more robust through measures designed to tackle possible fraud. It was also considered desirable to dissuade claimants from entering into speculative litigation at the expense of the respondents which would likely result in a return to higher premium costs to the general population.

3. Providing for greater undertaking of research, gathering of information and awareness raising by the PIAB

To enhance the role of the PIAB it was considered that it should increase its visibility through promotion and awareness raising of its work and the benefits that flow from that.

The Act was signed into law by the President on 13 December 2022

This post-enactment report has been prepared in accordance with Dáil Éireann Standing Order 164A and Seanad Éireann Standing Order 168. It serves as a review of the functioning of the Act twelve months following enactment.

Scope

The Personal Injuries Resolution Board Act 2022 amends the Personal Injuries Assessment Board Act 2003 (the Principal Act). The Department's policy has been to incorporate relevant amending legislation into that Act, so that the citation would not change. Therefore, the Act is structured to amend existing sections of, or to insert new sections into, the Principal Act.

While the principal focus of the Act is to provide for the reform of the PIAB as set out above, it also amends the Freedom of Information Act 2014 to ensure that the PIAB will not be considered a public body for the purposes of that Act insofar as it relates to records concerning mediation carried out by the PIRB. This will ensure the appropriate confidentiality required in mediation cases.

Policy Objectives

The primary policy objective of the Personal Injuries Resolution Board Act 2022 was to enhance and reform the PIAB to facilitate an increase in the number of personal injury claims that can be resolved through the PIAB process without recourse to litigation. Encouraging more claimants and respondents to avail of the PIAB model through mediation and/or assessment should lead to cost savings in the claims environment and facilitate reductions in insurance premiums.

The Central Bank's National Claims Information Database (NCID) Reports show the savings in time and costs when claims are settled through the PIAB. The Bank's NCID Private Motor Insurance Mid-Year Report 1 published in April 2023 shows that the time taken to resolve claims through litigation is more than 2 years greater than claims settled through the Board. The Report also shows that for claims of less than €100,000 in H1 2022 the average legal costs associated with settling claims through litigation was €17,813 compared to legal costs under the PIAB of €1,156.

One means of achieving an increase in claims resolved through the PIAB employed in the Act was by allowing for the widening of the case load of the PIAB through the retention of more complex cases, such as wholly psychological ones, by the Board. Through amendments to the discretionary powers provided to the Board set out in section 17 of the Principal Act it was intended to facilitate a 15-20% increase in the number of claims resolved through the Board.

The policy decision to introduce provisions to allow the Board facilitate mediation on a consent basis was guided by the policy goal of the desirability of increasing the number of personal injury claims which can be settled without recourse to litigation. Mediation offered by the Board will follow the recognised principles of mediation including being a fully voluntary process, ensuring confidentiality and impartiality and providing the opportunity for the parties to determine the issues that require resolving. Where the parties do not consent to mediation the existing process in respect of assessment of a claim remains available to them. An advantage of mediation is the ability for parties to get speedy access to a process that may produce a satisfactory outcome for the parties in a short space of time.

The policy decision was also guided by the fact that mediation is used by bodies such as the Residential Tenancies Board, Workplace Relations Commission and the Financial Services and Pensions Ombudsman as a means of facilitating the resolution of issues between parties.

As the Act places an increased emphasis on the resolution of claims through an amended personal injuries framework which facilitates mediation and assessment as means of resolving personal injury claims it also renames the PIAB as the Personal Injuries Resolution Board. This name change has been introduced to increase public awareness of the fact that the PIAB now offers this wider range of services.

The Act also contains several amendments to the Principal Act to enhance the role of the PIAB regarding promotion of the work of the Board, data, and reporting.

It also contains measures to facilitate the prevention of fraud. The Act makes it an offence to provide false or misleading information to the Board and allows the Board to provide information to An Garda Síochána. This should increase confidence in, and strengthen the process, which relies upon accurate and truthful information for its just and proper operation. The Act further enhances this effect through the requirement to provide greater information and documentation when making a claim.

It should be noted that the Act now provides for a refinement on the issue of costs where a case proceeds to litigation. A claimant can be refused an award for their legal costs where the award of the court does not exceed the amount of the assessment made by the PIAB.

Outline of the Act

Section 1 provides for definitions of certain terms used in the Act.

Section 2 provides for the change of name of the body to now become the Personal Injuries Resolution Board to reflect the new functions of the Board.

Section 3 sets out the application process to allow claimants make an application for mediation, assessment or both and the mandatory elements, including the requirement to supply a Personal Public Service Number or alternative identification.

Sections 4 and 5 provide that the PIAB will notify a claimant's application to the respondent asking whether the respondent consents to mediation, assessment, or both. They also provide for the procedures to be followed by the Board afterwards.

Section 6 provides that where a respondent consents to mediation and/or assessment of a relevant claim or is deemed to consent to assessment, that these are not considered to be an admission of liability regarding the relevant claim.

Section 7 expands the types of claims that will be considered by the Board by removing the discretion for the Board not to make an assessment for claims of a wholly psychological nature or where a long-term prognosis is not yet available. It also allows the Board not to proceed with mediation in a set of prescribed circumstances.

Section 8 extends the provisions relating to presumption that both the claimant and the respondent have the necessary capacity regarding the making of an assessment to also include mediation.

Section 9 introduces a new Chapter 1A to the Principal Act containing six sections (sections 18A to 18F) which introduce mediation as a new service to resolve claims under the Board's process. This section details the mediation process and outlines how a mediation will be completed. An unsuccessful mediation will move to assessment where a respondent has consented to same.

Section 10 updates the reference in section 19 of the Principal Act to provide for mediation.

Section 11 provides that the Board, with the consent of the Minister, may make regulations to impose charges in respect of their services. The section provides that where a respondent has failed to pay the relevant fee to the Board in the required timeframe the Board can apply an additional administrative charge.

Section 12 amends section 38 of the Principal Act and sets out that - where a monetary value has been agreed in mediation - the Board will issue an order to pay. It also provides for an “order to pay” to include any outstanding charges payable to the Board by the respondent.

Section 13 sets out the procedure to be followed where a claimant withdraws consent previously given to the Board to retain a claim past the statutory time frames set out in Section 49 of the Act.

Section 14 enables the Board to retain claims, where based on a medical report, a long-term prognosis will not be available under the 9-month statutory timeframe. It provides for up to an additional 2 years in addition to the 9 months for a long-term prognosis to become available.

Section 15 provides that the extended time allowed for a long-term prognosis to become available, as provided for under Section 14, will be included for the purposes of pausing the statute of limitations. This will apply while claims are with the Board and for a period of 6 months after the Board issues an authorisation.

Section 16 sets out procedures for a claim that has left the Board following an assessment, which has been accepted by the respondent but rejected by the claimant and has proceeded to litigation. Where a claimant brings proceedings in such circumstances, no award of costs may be made in favour of the claimant where the award does not exceed the Board’s assessment.

This section also provides that the assessment value will be deemed to be an offer of tender of payment made by the defendant as of the date the respondent accepted or was deemed to have accepted the assessment. This serves to limit, in certain circumstances, the level of costs that a respondent may have to pay from the point of the acceptance date.

Section 17 provides for four new functions to be accorded to the Board:

1. to facilitate the resolution of claims through mediation
2. to collect and publish information relating to personal injury claims including awards made under the Personal Injury Guidelines
3. to conduct or commission research, analysis or studies on matters relating to the function of the Board to promote awareness of its role and the benefits of resolving claims through the Board.
4. to promote awareness of its role and the benefits of resolving claims through the Board.

Section 18 extends the requirement for certain persons to provide information to the Board.

Section 19 includes mediators appointed under the Act in the classes of persons which are indemnified under the Act.

Section 20 provides that the Board may report suspected offences to An Garda Síochána.

Section 21 provides that the Board shall provide the Minister with information about the performance of the Board's functions.

Section 22 sets out that the provision of false or misleading information to the Board by a claimant, respondent or third party is an offence.

Section 23 requires a review and subsequent report on the operation of the provisions of the Act.

Section 24 provides for the exclusion of the mediation process from the provisions of the Freedom of Information Act 2014. This is required as mediation is a confidential process. Finally, Section 25 provides the short title of the Bill, as well as the citation and makes provision for enactment by Statutory Instrument.

Operation of the Act

The Personal Injuries Resolution Board Act 2022 has been commenced on a phased basis during 2023. This approach has allowed for those provisions of the Act which can be commenced without delay are commenced at the earliest opportunity while allowing both stakeholders and the PIAB itself to make the necessary preparations for the commencement and implementation of other provisions at a later stage. Each of the statutory instruments are discussed below in order of their coming into effect together with the details of the provisions that they introduce.

The Personal Injuries Resolution Board Act 2022 (Commencement of Certain Provisions) Order 2023 (S.I. 28 of 2023)

This Commencement Order provided for the commencement of the following sections on 13 February 2023:

Section 1
Section 7 (a) (iii) and (iv)
Section 11 (c)
Section 12 (b)
Section 13 (b) and (c)
Sections 14, 15 and 16
Section 17 except (aa)
Section 18
Sections 20, 21 and 22, and
Section 25.

The substantive provisions it brought into force can be grouped as follows:

Provisions designed to increase the numbers of claims that the PIAB can consider:

- Section 7 (iii) and (iv) allows for the retention by the Board of additional claims, such as those of a wholly psychological nature.
- Sections 14 and 15 set out the circumstances whereby the retention by the Board of additional claims, such as claims awaiting long-term diagnosis may take place.

The PIAB has observed that since the introduction of the legislation it has been able to retain more cases in these categories (sections 7 (iii) and (iv), 14 and 15) for assessment than would previously have been able possible.

Prior to the introduction of the Act the PIAB had to release cases in these categories so that they could proceed through the Courts. From February 2023-November 2023 (nine-months since the commencement of these provisions) only 291 cases have been released compared to 389 cases in the same period in 2022.

Alongside this PIAB has noted an increase in the percentage of cases assessed which include psychological damage for the period January 2023 – June 2023 (Quarters 1 and 2) pre and post legislative changes. This could be due to the legislative changes but could also be coincidental.

Provisions relating to additional functions assigned to the PIAB:

- Sections 17 and 18 assign certain additional functions to the PIAB including to publish information, to commission research and analysis and to promote public awareness of the work of the Board. The element in section 17 relating to the introduction of mediation as a service to be conducted by the PIAB was not included in this phase of commencement. That element is due to commence on 14 December 2023.

Research data can prove invaluable to policy makers by providing supporting arguments for system change and assist in the making of choices between policy options. Since commencement of sections 17 and 18 above, the PIAB has focussed on three core strands in terms of introducing its research function:

- 1) **Research Briefing Series** - Short pieces of research focusing on special topics of interest produced by the PIAB using its own data to provide greater insight into emerging trends within the personal injuries landscape. The first report in the series, titled '*Motor Liability Accidents and Adverse Weather Events*' launched on November 16th, 2023. Further reports will follow on specific areas of interest.
- 2) **Average Awards Reports** - Since the adoption of the Personal Injury Guidelines (the Guidelines) by the Judicial Council on 6 March 2021, the PIAB has produced reports on average awards to bring more transparency to its work. This research has also highlighted the impact of the Guidelines. This enables claimants, respondents, policy makers and those working in relevant sectors to understand more about awards for personal injuries claims in Ireland. The PIAB's most recent report on average awards was published in November 2023.

Future reports will be produced every 6 months, so that trends can be examined. The PIAB's reports are circulated to relevant stakeholders on publication and made available to the public in the report section of the PIAB website.

- 3) **Commissioned Research** – The PIAB has partnered with an advisory consultant to produce a series of reports utilising the PIAB's data that are intended to give a more in-depth picture of claims and injuries of certain sectors or categories of claims. The first report will provide a detailed consideration of employer liability claims. The source data utilised for this report included over 18,000 employer liability claims and just under 5,000 awards made by the PIAB between 2019 and 2022. This report which identifies sector-specific trends in workplace accidents, is intended for publication in December 2023. The PIAB intend to produce further reports in this manner.

Throughout 2023, the PIAB has been promoting awareness of its work through an advertising campaign on social media which highlights claimants' satisfaction with their experience of the PIAB's services. The PIAB are currently planning a conference for 2024 which will seek to raise awareness PIAB and its functions and will seek to bring together sector experts and stakeholders to share best practice and new initiatives.

- Section 21 provides that the PIAB may provide information to the Minister in particular circumstances.

Provisions designed to address fraudulent claims:

- Section 20 allows the PIAB to provide information to An Garda Síochána.
- Section 22 creates an offence of supplying false information to the PIAB.

Since the implementation of these legislative provisions the PIAB has not been required to report to An Garda Síochána any incidences where false or misleading information was provided to the PIAB. Separately, PIAB routinely responds to requests from An Garda Síochána for information under Data Protection protocols and procedures. To date, the PIAB has not seen an increase in the volume of An Garda Síochána requests in this area but notes the brief time since commencement of the relevant provisions.

Provisions relating to the PIAB charges and court costs:

- Section 11(c) sets out that respondents to claims considered by the PIAB will be liable for charges incurred by the PIAB in respect of that respondent and in accordance with regulations.

The PIAB is exploring a new debt management model and will consider the implementation of this provision in that context.

- Section 16 provides that where a claimant rejects an assessment made by the PIAB and subsequently commences court proceedings, then no award of costs may be made in favour of the claimant where the award does not exceed the Board's assessment.

The extent of the use of these new provisions can only be measured directly in the Courts. The PIAB has no formal mechanism to know when legal costs are awarded in litigated cases and typically, will only become aware of such an occurrence anecdotally or by means of media reporting.

In exercising its research function, the PIAB is collecting data in order to identify average awards made by the courts. During this process it has become aware of a court using section 16 to refuse to award a claimant their court costs where the award that it made for their injuries was lower than the assessment arrived at by the PIAB.

The PIAB reports that there has been an increase in the rate of acceptance since the introduction of this provision but point out that it is difficult to attribute it solely to this initiative as there are several factors which may be responsible for the increase.

The Personal Injuries Resolution Board Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 354 of 2023)

This Commencement Order provided for the commencement of Section 3 (b) and (c) of the Personal Injuries Resolution Board Act 2022 with effect from 4 September 2023.

Section 3 (b) and (c) of the Act provide for the mandatory elements required when making an application to the PIAB. If these mandatory requirements are not included in a claimant's application, the PIAB will not be able to treat the application as complete.

Until a complete application is received by the PIAB the provisions already in the Personal Injuries Assessment Board Act 2003 relating to a suspension in the running of time under the Statute of Limitations cannot come into operation.

These provisions are intended to enhance and improve the PIAB process and reduce the potential for identity fraud while ensuring accuracy in relation to payment of resolved claims. This is achieved by measures such as requiring that the PPS Number (or alternative ID) of the claimant should be provided when making an application and setting down that the claimant should confirm that the medical report enclosed with the application describes the injuries allegedly sustained in that accident.

Minister of State for Trade Promotion, Digital and Company Regulation Dara Calleary TD at the Department of Enterprise, Trade and Employment provided advance notice (14 weeks) of this commencement via press release to give potential claimants and their legal advisors sufficient time to adjust to the changes in the procedure.

Similarly, the PIAB also led a communications campaign to inform stakeholders of the forthcoming changes. The PIAB engaged with stakeholders in advance of the implementation of the provisions and issued an explanatory notice to approximately 1,600 solicitors prior to their commencement. The PIAB also amended its ICT system, particularly the online forms and portal, to allow for a smooth transition to the new arrangements. The PIAB report that the changes brought about by these provisions have been significant for many representatives.

The commencement of Section 3 of the Act was announced on 29 May 2023. The PIAB noted a decline in complete applications following this. The completion rate continued to decline until September 2023. Commencement of these provisions became effective on 4 September 2023. The PIAB anticipated that claimants would need to become familiar with these significant changes. This proved to be the case as initial completion rates decreased in the first two weeks following commencement, to 23% in the first week and 28% in the second. Since then, the completion rate has increased to 71% at the initial stage of application.

The PIAB noted that another impact ahead of this commencement was that more applications than average were received in August while lower than average numbers of applications were received in early September. Applications before the 4th of September did not require the inclusion of the claimant's signature or their PPS number, therefore there was an incentive for claimants to apply before this date in order to avail of the suspension of time under the Statute of Limitations while providing less information.

The Personal Injuries Resolution Board Act 2022 (Commencement of Certain Provisions) (No. 3) Order 2023 (S.I. xx of 2023)

This Commencement Order provides for the commencement of the remainder of the Personal Injuries Resolution Board Act 2022 on 14 December 2023. These provisions relate primarily to the introduction of mediation as a service that can be offered by the PIAB. Mediation will initially be introduced for claims in the employer’s liability category. Mediation for public liability and motor liability claims will be introduced separately during 2024. Other provisions include the power for the Minister to change of name of the Board to the Personal Injuries Resolution Board to signify the increase in the breadth of services offered and further review and reporting requirement on the effects of the amendments provided by the Act to be initiated eighteen months following this commencement.

The PIAB has undertaken the considerable preparation both both internally and externally to prepare for the introduction of mediation including:

- recruitment and appointment of a Head of Mediation and two supporting members of the PIAB staff
- establishment of a panel of external independent mediators (22 members)
- development of service level agreements for mediator panel members
- procurement of a training provider to deliver mediation training covering all aspects of the PIAB mediation process.
- drafting of the PIAB mediation procedures and processes which set out how the PIAB will carry out mediation and ensure its integration with the PIAB’s existing assessment service.

PIAB will initiate the mediation service with employers’ liability claims. Historically employers’ liability claims have one of the lowest levels of consent provided by respondents - currently at 65%, meaning that higher volumes of these claims proceed to litigation in the Courts. By encouraging mediation in this area first, this will, if it is successful, lead to less litigation costs and ultimately lower insurance premiums for customers in this area.

In first applying the service to one category of claim, the PIAB will be able to determine the effectiveness of its devised mediation process together with the suitability of the Rules put in place to support it. It will also be able to gauge the success of its training programme from the experience of the mediators in carrying out this first tranche of mediations.

The phased approach will also allow the Board to assess the appetite of claimants and respondents for the new service and at the same time review the time that each mediation takes. This will also allow it to confirm whether its planned staffing of the service will be sufficient for the projected uptake as it is rolled out to include the other categories of claim. The details of such further phased introduction of mediation to these other categories of claim will be informed by the experience gained in this first step towards full implementation.

The Personal Injuries Resolution Board Act 2022 (Change of Name of Board) Order 2023 (S.I. xx of 2023)

Minister Dara Calleary, Minister of State at the Department of Enterprise, Trade and Employment, under the power granted him by section 2 of the 2022 Act, is due to make the Personal Injuries Resolution Board Act 2022 (Change of Name of Board) Order 2023 (S.I. No. xx of 2023) in order to change the name of the PIAB to the Personal Injuries Resolution Board on 14 December 2023.



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