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Trádála agus Fostaíochta  
Department of Enterprise,  
Trade and Employment

# Regulatory Impact Analysis

## Personal Injuries Resolution Board Bill 2022



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## 1. Summary of RIA

Summary of Regulatory Impact Analysis (RIA)	
<b>Department/Office:</b> Department of Enterprise, Trade and Employment	<b>Title of Legislation:</b> Personal Injuries Resolution Board Bill 2022
<b>Stage:</b> Approval of Text of Bill	<b>Date:</b> 27 July 2022
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### 1.1 Background

The Programme for Government outlines the importance of insurance acting as a safety net to enable our economy and our society to fully function. Through the [Action Plan for Insurance Reform](#) the Government has prioritised reform of the insurance sector. The Action Plan sets out 66 actions for reform which taken together should facilitate a reduction in insurance costs.

### 1.2 The Personal Injuries Assessment Board (PIAB)

PIAB was established in April 2004 to fairly, promptly, and transparently facilitate compensation to people who suffered from accidents involving personal injuries, in a cost-effective manner. Through PIAB certain classes of personal injury claim, where liability is uncontested, can be settled without the need for many of the costs associated with litigation, which can contribute to the high cost of settling such claims. PIAB is an independent statutory agency that is under the remit of the Minister for Enterprise, Trade and Employment.

PIAB does not make a judgement as to liability. Under the constitution, the administration of justice is largely the preserve of the courts. Under the Personal Injuries Assessment Board Act 2003-2019, PIAB assesses claims for compensation arising from personal injuries sustained as a result of a motor, workplace, or public liability incident and where both parties, claimant and respondent, consent to an assessment. It assesses claims with reference to the Personal Injuries Guidelines. The Act provides

that all personal injury claims, with certain exceptions, such as medical negligence cases, must be submitted to PIAB unless they are settled by the parties involved at an early stage. Where a respondent refuses consent to an assessment by PIAB or where either party reject the award made by PIAB, the Board will issue an authorisation to the claimant so that he or she may take legal proceedings. It is a matter for the parties concerned whether they wish to accept the assessment.

In a typical year (pre-Covid-19) PIAB received approximately 30,000 cases per annum. Approximately 18,000 cases were consented to (i.e., respondents agree to PIAB making an assessment) with PIAB thereafter making approximately 12,000 assessments on an annual basis.

PIAB reports that public health restrictions have led to a significant reduction in the number of road collisions during 2020 and in 2021. These trends are similar for accidents in public places and places of work due to restrictions in access. These have resulted in a significant decline in personal injury claims to PIAB. Claim application volumes in 2020 (26,000) were 16% lower than 2019 levels (31,000). Applications in 2021 have reduced by approximately 20% compared to 2020 volumes (21,000 v 26,000). The cumulative impact over the two years is an expected overall decrease in volumes of over 30% on 2019 levels.

During 2021 PIAB awarded total compensation to accident victims of €157 million, managing over 21,000 personal injury claims. In 2021, motor claims volumes were 11,409; public liability claims numbered 5,774; and employers' liability claims volumes were 4,227. Where both parties accept the assessment, the matter is resolved without recourse to litigation, resulting in legally enforceable awards. In 2021 PIAB achieved an average claim processing timeframe of 10.5 months.

### **1.3 Benefits of the PIAB model and the impetus for reform**

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

The [Personal Injury Guidelines](#) were adopted by the Judicial Council on March 6, 2021 and apply from April 24, 2021. The Guidelines change the amounts of general damages to be awarded by the Courts and by PIAB. PIAB and the Courts must have regard to the new Guidelines and are required to explain where they deviate from the Guidelines. The Guidelines bring more certainty and consistency and should lead to more claims being settled through PIAB, and less cases going to litigation.

On April 11th, 2022, PIAB published its 2nd [Personal Injuries Award Values Report](#) which shows that the average award by PIAB has decreased by 42% since the

introduction of the new guidelines. The average PIAB award is now €13,825 compared to €23,877 in 2020. 72% of awards are now €15,000 or less compared to just 30% of PIAB awards in 2020. This is a particularly significant reference point as €15,000 represents the current jurisdiction of the District Court.

The Central Bank of Ireland is responsible for publishing reports analysing data provided by insurers to the National Claims Information Database (NCID). It has published three such reports on motor insurance claims ([December 2019](#), [November 2020](#), [November 2021](#)) which show that the pursuit of litigation is contributing significantly to overall settlement costs, and that the cost of claims settled by litigation has increased significantly since 2015. The latest report also shows that legal costs associated with settling claims through litigation add substantially to the overall cost of the claim, averaging 51% of the compensation cost in the years 2015- 2020. The report highlights that 94% of all claims cost less than €100k to settle. For claims that had total settlement costs less than €100k, those settling by litigation before a court award had legal costs that were 38% of total cost (or 64% of the compensation award). For those settled with a court award, legal costs totalled 49% of total costs (or 100% of the compensation award).

Legal costs made up the largest difference between the average costs of claims settled through PIAB and directly after PIAB. For motor claim cases under €100k settled through PIAB in 2020 the average total cost of the claim was €23,118 whereas those cases settled via litigation before a court award had an average cost of €40,566, of which €16,064 consisted of legal costs. In addition, the time taken to resolve claims differed significantly, with claims in 2020 under the litigation model taking on average 4.1 years to settle compared with 2.3 years with PIAB.

The Central Bank of Ireland have also published two reports on Employer Liability (EL) and Public Liability Claims (PL) ([July 2021](#), [June 2022](#)). The latest report shows that claims settled through PIAB are faster and have lower legal costs than those settled by litigation, despite having similar award levels for claimants. The report shows that from 2015 to 2020 the average settlement time for injury claims through PIAB was 1.8 years compared to 4.5 years through litigation. The report also shows that for the same period the average legal cost for Employers Liability claims (under €150,000) settled via PIAB was €689 versus €22,889 for a litigated claim (33 times higher), despite the average compensation being similar.

While the NCID reports make clear that PIAB offers the most timely and cost-effective settlement channel in terms of settlements only 15% of motor claims and 11% of EL/PL claims are settled through PIAB.

PIAB awards can be accepted or rejected by claimants and respondents. Since its establishment PIAB have recorded acceptance rates of just over 50%, made up of a respondent (usual an insurer) acceptance rate of about 90% and a claimant acceptance

rate over 50%. PIAB made 8,587 awards in 2020 with an acceptance rate of 50.8%. The PIAB 'Personal Injuries Award Values Report' published on the 11th of April 2022 shows that acceptance rates have fallen to 37% since the introduction of the new Injuries Guidelines in April 2021. Definitive reasons for this drop in acceptance rates are presently unclear. It is possible that claimants are awaiting the resolution of legal challenges to the guidelines or the outcome of similar cases in the courts before committing to accepting PIAB assessments.

A test case with regard to the challenges to the Guidelines was before the High Court at the end of March and judgement was delivered on June 2nd, 2022. The court found that the Personal Injuries Guidelines are constitutional, and that PIAB acted correctly and lawfully in assessing the relevant personal injury claim. Judgement in a second Judicial Review case challenging PIAB's application of the Guidelines was delivered on June 17<sup>th</sup>, 2022, and found that PIAB applied the Guidelines appropriately in the case and PIAB's obligation to give reasons was being complied with. It is expected that the Personal Injuries Guidelines when they are bedded in will mean acceptance rates will improve as there will be consistency and predictability of awards across both the Courts and PIAB.

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## 2. Policy Objective of the Proposal

The policy objective of the proposal is to amend the Personal Injuries Assessment Board Acts to enhance and reform 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.

Amendments to the discretionary powers provided to the Board set out in section 17 of the Principal Act are intended to enhance the number of personal injury claims which are resolved through the Board. It is intended that these amendments to section 17 should facilitate a 15-20% increase in the number of claims resolved through the Board.

The introduction of provisions to allow the Board facilitate mediation on a consent basis is intended to increase the number of personal injury claims which can be settled without recourse to litigation. 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. 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 Bill 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 PIAB as the Personal Injuries Resolution Board. The Bill also contains several amendments to the Act to enhance the role of PIAB regarding promotion of the work of the Board, data and reporting and measures to facilitate the prevention of fraud.

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### 3. Policy Options

1.	<b>Do Nothing</b>
2.	<b>Enact Legislative Measures</b>



## 4. Identification and Description of Options

### 4.1 Amendments to section 17 of the Act

Option	Benefits	Impacts
<b>1. Do nothing</b>	No State intervention required.	PIAB continues to assess personal injury claims as provided for under the Principal Act.
<b>2. Enact legislative measures to amend section 17</b>	Potential increased resolution of personal injury claims with lower associated costs. Section 17 of the Principal Act provides PIAB with discretion to not make an assessment for a range of reasons on a case-by-case basis.	PIAB considers there may be scope to retain between 4,000 - 5,000 cases every year (section 17 cases). Potential for legal challenge. The Department has worked closely with the Office of the Attorney General in drafting the Bill.
<b>Delete section 17(1)(ii) of the Principal Act to remove PIAB’s discretion not to assess a claim relating to psychological damage.</b>	The new Personal Injury Guidelines provide detail on the level of awards relevant to injuries of a psychological nature. Responses to the public consultation were in favour of this change.	PIAB estimates this amendment to the Principal Act would facilitate an increase in the number of cases resolved without recourse to litigation (approximately 1,800 additional cases per annum). Some cases that consist of a wholly psychological injury may not be appropriate to be assessed by PIAB, for those cases other provisions under Section 17 may apply.
<b>Delete section 17(1)(iii) of the Principal Act, and introduce separate provisions relating to long-term prognosis</b>	Claims where there is a delay reaching a long-term prognosis can still benefit from the PIAB process. Currently these cases are released, but a long-term prognosis must be awaited before they can be progressed through litigation.	PIAB would still have the other discretions provided for in Section 17 to decline making an assessment. In addition, provisions relating to how these claims might be managed may also provide a discretion for cases, where a long-term prognosis remains unknown after an extended period of time, to be released.

## 4.2 Provisions for Mediation

Options	Benefits	Impacts
<p><b>1. Do nothing</b></p>	<p>No State intervention required.</p>	<p>PIAB continues to assess personal injury claims as provided for under the Principal Act.</p>
<p><b>2. Enact legislative measures to facilitate PIAB provide mediation</b></p>	<p>The use of mediation as a consent-based mechanism in the PIAB process is intended to increase the number of personal injury claims settled through PIAB. Currently, PIAB's statutory functions do not include provisions for PIAB to offer mediation and to engage with the parties to reach an agreement on what might be assessed. Accordingly new provisions need to be drafted.</p> <p>Responses to the public consultation were largely in favour of the introduction of mediation.</p>	<p>Potential increased resolution of personal injury claims through PIAB.</p> <p>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. On the other hand, the mediation stage if not carefully designed, could represent an additional layer in the process and involve additional time and potentially expense. PIAB's preliminary assessment is that the cost of mediation if it arises at the outset of the PIAB process would be largely neutral. The mediation process is voluntary and inclusive in that it is for the parties involved to agree an outcome facilitated by PIAB.</p> <p>As mediation is a new function for PIAB there is potential for unintended consequences. However, the Department has adopted several mitigation strategies to reduce the risk.</p> <p>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</p>

		<p>facilitating the resolution of issues between parties and the proposed provisions on mediation are modelled on existing legislation in respect of these bodies.</p> <p>The Department has worked closely with PIAB and the Office of the Attorney General in drafting the Bill.</p>
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### 4.3 Functions of Board

Options	Benefits	Impacts
<p><b>1. Do nothing</b></p>	<p>No State intervention required.</p>	<p>PIAB continues to perform the functions set out under section 54 of the Principal Act.</p>
<p><b>2. Enact legislative measures to amend the functions of the Board to enhance the role of PIAB</b></p>	<p>To allow PIAB provide consent-based mediation, it must be included in its statutory functions.</p> <p>PIAB has significant levels of data relating to personal injury claims which could be used to understand more about the relationship between reward and injury, and to focus on preventing accidents occurring in the first place.</p> <p>The NCID provides data reflecting the costs and time benefit of using the PIAB Process. PIAB could use this data to encourage a better understanding of their process and in turn potentially increase the</p>	<p>Increasing PIAB's functions might impact on their current work. Careful consideration is being given to the operational and financial requirements required to support an increase in the functions of PIAB.</p> <p>Responses to the public consultation indicated broad support for a communication campaign by PIAB. Any such campaign must be carefully considered in relation to its message and intent.</p> <p>Regular publication of injury data by PIAB could increase awareness relating to accident prevention. Reducing the number of accidents is an important function in terms of reducing claims costs.</p> <p>Provision will be made for additional powers for the Board to</p>

	<p>number of claims settled through PIAB.</p> <p>Responses to the public consultation were broadly supportive of introducing mediation, more use of data by PIAB and the promotion of the benefits of using PIAB.</p>	<p>undertake the additional statutory functions.</p> <p>As the Bill 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 PIAB will be renamed as the Personal Injuries Resolution Board (PIRB).</p>
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#### 4.4 Costs in proceedings where the claimant does not accept a PIAB assessment

Options	Benefits	Impacts
<p><b>1. Do nothing</b></p>	<p>No State intervention required.</p>	<p>Section 51A as inserted by the Personal Injuries Assessment Board (Amendment) Act 2007 would remain as it is. This provision applies where a claimant brings proceeding in relation to a claim having refused a PIAB assessment that a respondent had accepted. If the amount awarded or accepted in settlement does not surpass the PIAB assessment, the court does not allow for costs for the claimant and may also opt that the claimant cover the costs incurred by the respondent.</p>
<p><b>2. Enact legislative measures to amend the current provisions of Section 51A</b></p>	<p>A defendant, where litigation commences, may make a lodgement to court/offer of tender payment as a potential settlement of a claim. Where a court award is not in excess of this amount, the plaintiff is</p>	<p>An amended Section 51A will still only apply where a court award does not beat a PIAB assessment that the claimant previously rejected but the respondent had accepted.</p> <p>There is no change to the provisions with regard to a claimant not being able to recover</p>

	<p>liable for both their own and the defendant's costs from the date of the lodgement. However, costs incurred prior to the making of the lodgement, including the costs involved in commencing litigation are excluded from this liability. The NCID reports clearly demonstrate the considerable additional legal costs when a case leaves PIAB and litigation commences.</p> <p>Amendments to the provisions of Section 51A with regard to costs will bring the provisions in alignment with the long-standing practice with regard to lodgements/offer of tender payment. There is long and established jurisprudence and case law concerning lodgements and tenders and their implications.</p> <p>Providing that the date the respondent accepted a PIAB assessment is deemed as the date of the offer of tender payment ensures all costs are encompassed by the provision.</p>	<p>their own side's costs in this situation.</p> <p>The amendment impacts on how costs on the respondent's side will be dealt with by aligning with the lodgement/offer of tender process.</p> <p>While the lodgement process requires a payment into court, the offer of tender payment does not. However, the respondent will only benefit with regard to their own costs under Section 51A if they had been in a position to actually make the payment of the assessment value on the date they accepted the assessment. Where court finds that the respondent was not in a position to make the payment on acceptance of the PIAB assessment the respondent will not benefit from the new costs provisions for recovery of their costs.</p> <p>Aligning Section 51A with this process will provide clarity to practitioners with regard to costs in proceedings.</p> <p>The intention of the amendment is to provide an incentive to settle claims through the PIAB process thereby avoiding the costs involved in unnecessary litigation.</p>
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## 4.5 New Offence Provisions

Options	Benefits	Impacts
<p><b>1. Do nothing</b></p>	<p>No State intervention required.</p>	<p>As the Act currently stands, the respondent is provided with the claimant’s application form and submitted medical report when issued with a formal notice from PIAB. The respondent has 90 days to respond either giving or refusing consent for an assessment to be made. Where a respondent is of the view that the information provided by the claimant is misleading or untrue, they can refuse consent.</p> <p>Where a respondent has refused consent PIAB provides the claimant with an authorisation to proceed to litigation if they so wish. Should litigation commence, the respondent, as part of their defence, can raise matters relating to the veracity of the information provided by the claimant in their statement of grounds. Complaints can be made to An Garda Síochána where fraud is suspected.</p>
<p><b>2. Amend the PIAB Act in line with the text of the Private Members Bill making it an offence to knowingly or recklessly provide misleading or false information to PIAB.</b></p>	<p>The provision of specific offences in PIAB’s legislative framework should better safeguard the proper operation of the PIAB process.</p> <p>PIAB would not make any determination as to the validity of a claim and would continue to make an assessment where the respondent has</p>	<p>Amending the Act makes it an offence to provide false or misleading information to PIAB thereby providing an incentive to ensure correct and accurate information is providing to PIAB.</p> <p>This should increase confidence in, and strengthen the PIAB process, which relies upon the truth and accuracy of information for its just and proper operation.</p>

	consented to the process even if a complaint is made regarding a possible offence under this new provision	
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## 4.6 Miscellaneous Provisions

Options	Benefits	Impacts
<b>1. Do nothing</b>	No State intervention required.	PIAB continues to assess personal injury claims as provided for under the Principal Act.
<b>2. Enact legislative measures to facilitate PIAB assessment of claims where long-term prognosis is awaited.</b>	It is proposed to facilitate the Board retain cases (subject to a maximum time period of 39 months) where, following an independent medical examination, the prognosis cannot be determined within the statutory timelines. There are a significant number of cases released into litigation by the Board on this basis. 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. Retaining these cases within PIAB until a prognosis is available would allow parties to benefit from the efficiencies in cost and time demonstrated by the NCID reports.	<p>It is acknowledged that extending the time limit further than the 15 months provided for in the Principal Act may raise an issue regarding access to justice. Even for cases where a claimant agrees to a limited extension this could still raise issues for a respondent in defending a case regarding liability where they have rejected a PIAB assessment.</p> <p>To prevent this occurring, it is proposed that the prognosis be based on an independent medical review, where a prognosis continues to be awaited following review, the Board will seek the consent of both parties to retain case. It is also proposed to offer mediation to the parties where these claims have not been resolved within the extended time period.</p> <p>It is recognised that in these cases there is an important balance to be struck between the right of access to the courts and the public interest in providing a</p>

		cost-effective settlement channel for personal injury claims through the Board.
<b>3. Enact legislative measures to facilitate the setting of fees by PIAB with the consent of the Minister</b>	Section 22 of the Principal Act provides that the Minister may make regulations for PIAB to impose charges. It is proposed to provide the Board with the power to make regulations, with the consent of the Minister, to impose charges. This would enable the Board with the consent of the Minister to set appropriate charges for its services that enable it to operate on a self-funded basis and follows the model of the Residential Tenancies Act 2012 and the Personal Insolvency Act 2012.	As section 65 of the Principal Act provides that the Chief Executive of PIAB 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 based on an assessment of their financial position and the need to operate on a self-sustainable basis.
<b>4. Enact legislative measures to facilitate the provision of a PPSN by claimants when making an application</b>	The requirement for proof of identity is intended to assist in the prevention of identity theft and fraud and to ensure accuracy in relation to payment of resolved claims.  Personal data will only be processed by PIAB where this is necessary and only to the extent that is necessary.	PIAB is listed in Schedule 5 of the Social Welfare Act 2005 as a body that may use Personal Public Service Numbers.  This provision will be progressed in consultation with the Department of Social Protection and the Data Protection Commission.
<b>5. Enact legislative measures to encourage the submission of complete information to PIAB</b>	The PIAB Act currently provides that certain information as prescribed by rule should be provided by a claimant to the Board when making an application. The	Failure to provide the specified information by a claimant will not stop an assessment being made but will result in the statute not being paused while the claim remains with PIAB.



	<p>information contained in the application is provided to the respondent when they are asked for their consent to the making of an assessment. Where the respondent consents, PIAB will make an assessment on the information provided. By linking the provision of this information to the pausing of the statute under Section 50, a claimant benefits from the statute being paused by providing the required information. The respondent has a complete application to then consider when deciding to consent not to the PIAB process. Provision of the information allows PIAB to make as accurate an assessment as possible.</p>	<p>This should act as an incentive to provide the required information at the application stage and ensure that PIAB has the required information to undertake its statutory functions in a timely manner.</p>
<p><b>6. Enact legislative measures to facilitate PIAB recovering respondent fees</b></p>	<p>There are claims released by PIAB every year under Section 17(3) where the respondent fee has not been paid.</p> <p>Providing PIAB with the ability to recover fees will allow these cases to be retained within PIAB.</p> <p>Given the additional administrative burden likely to arise in pursuing late payments or recovering a non-</p>	<p>Careful consideration must be given to the level of late fee applied to ensure it adequately covers the administrative costs involved and is not punitive in nature.</p> <p>While providing for the recovery of non-paid respondent fees will allow PIAB to retain more cases, PIAB will retain the discretion under Section 17(3) to release cases for non-payment.</p>

	payment, providing PIAB with the power to administer a late payment fee should act as a disincentive to not pay the fee in a timely manner.	
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## **5. Impact Analysis**

### **5.1 National Competitiveness (incl. employment)**

A well-functioning insurance market is a vital component of economic activity and financial stability. The pricing and availability of general insurance has been subject to considerable volatility in recent years, in particular for some sectors. While some improvement has been seen in relation to motor insurance, issues remain in relation to businesses with high levels of footfall such as in the hospitality; retail; tourism; voluntary; and child-play sectors, in terms of public and employer liability cover. These are sectors which have a large number of SMEs operating in and which have reported issues with the cost and availability of insurance.

Over the past five years the National Competitiveness and Productivity Council has examined insurance costs and considers that the price of employers' liability insurance and public liability insurance undermines national competitiveness. In an insurance bulletin issued in February 2021 the Council considered enhancing and reforming the role of PIAB as an important measure to addressing the issue of high insurance costs and easing the concerns around the availability of insurance for enterprise in Ireland. The Bill seeks to encourage more claimants and respondents to avail of the PIAB model. This should facilitate cost savings in the claims environment which should ultimately lead to reductions in insurance premiums.

Costs associated with claims and litigation have been highlighted by stakeholders as being a reason in Ireland for the increase in the cost of insurance premiums.

The Personal Injury Guidelines set out the level of damages that may be awarded or assessed in respect of personal injuries. The Guidelines reduce award levels for most categories of personal injury and will be used by both PIAB 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. Encouraging greater use of PIAB and facilitating claim resolution through PIAB should see costs in the personal injury environment reduce alongside the decrease in award levels as a result of the Guidelines. This in turn should be reflected in premiums providing cost savings to consumers, SMEs, and larger companies alike.

### **5.2 Socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities**

Significant economic and social concerns arise when costs of insurance premiums escalate to a point where consumers, community and voluntary groups and businesses

cannot afford them. The Bill should not have any adverse impact on socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities. Reform of PIAB as provided for by the Bill should impact positively on these groups as savings that can be achieved in the administration of personal injury claims should facilitate price reductions to the premiums of individual insurance policy holders.

### **5.3 The environment**

The Bill should not have an impact on the environment.

### **5.4 Significant policy change in an economic market including impacts on competition and consumers**

The Bill is intended to promote the development of a more stable and lower cost claims environment for consumers and business. It should be noted that in December 2020 the Competition and Consumer Protection Commission (CCPC) published a Public Liability Insurance Market Study which highlighted the need for reform of the insurance sector. The CCPC found the incidence of high public liability premiums is spread across all sectors while availability issues seem to be primarily impacting certain segments of the market (community and sports organisations in particular). The CCPC recommended that the role of PIAB be expanded and enhanced to provide for it to become the main personal injury settlement channel in the State.

### **5.5 SME Test**

The possible impact on SMEs arising from the proposed legislative changes has been considered in line with the SME (Micro, Small and Medium Enterprises) Test. This is an integral part of the European Commission's Better Regulation Guidelines since 2009. It asks each Member State to include an assessment of the burden on SMEs for relevant regulations and legislation. Relevant regulation should be interpreted in a broad sense of its possible implications for SMEs.

The following has been considered:

- *Exemptions*  
The PIAB Act provides no additional regulatory requirement on SMEs. Where an SME has been identified as a respondent for the purposes of the PIAB Act, they are likely to have public/employer liability insurance in place. They are also entitled to engage legal representation if they so wish and at their own cost. The PIAB process is voluntary, and the respondent must consent to PIAB proceeding with an assessment. Where a respondent chooses not to consent, the claim is released by PIAB, and the claimant is authorised to commence legal proceedings if they so wish.

- *Deadline variation/flexibility*

The statutory deadlines provided under the PIAB Act set out the period a respondent has to consent to PIAB making an assessment following notice of an application to PIAB, the time period for PIAB to make the assessment, and the time period given to a respondent to accept an assessment. Given the nature of the personal injury environment it would not be appropriate to allow for variation or flexibility regarding these timelines for different classes of respondent.

- *Simplification of the implementation of regulation*

The provisions of the PIAB Act do not amount to the regulation of any particular business sector. They are solely concerned with the assessment of personal injury claims. The amendments detailed in the Bill will provide for PIAB to also offer mediation in personal injury claims that come to them. This again does not amount to the regulation of a business.

## **5.6 North-South, East-West relations**

The Bill does not impact North-South, East-West relations.

## **5.7 The rights of citizens/human rights**

The public consultation process resulted in a number of suggestions being made to place PIAB on a quasi-judicial footing. The suggestion was explored in depth with the conclusion that there exist a number of convincing counter-arguments against pursuing such a policy. Constitutional considerations arise in terms of both the primacy of the courts in the administration of justice as well as the fundamental right of access to the courts. Furthermore, many areas of the law relating to matters in personal injuries cases derive from common law developed over time by the courts. This is an integral aspect of the Irish legal system which legislation should avoid appropriating. The legislation is framed in recognition of these factors and instead makes proposals which promote a mutually agreeable outcome and which deter parties from disregarding the PIAB process and the public policy goals that the Board pursues.

Responses to the public consultation indicated broad support for the introduction of mediation into the PIAB process. The Bill provides that where both parties consent, a mediation process would be facilitated by PIAB to resolve the claim. Mediation provides an opportunity for the parties to a personal injury claim to address issues, explore options, and reach a mutually agreeable outcome.

A primary objective of the legislation is to enable PIAB 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. Mediation will be voluntary for both the complainant and the respondent, the parties may be accompanied to mediation including by a legal advisor, and the parties may obtain independent legal advice at any

time if they so wish. Resolution of a claim through agreement at mediation will be a matter for the parties and will be undertaken within the statutory timeframes set out in section 49 of the Principal Act.

Mediation will not impinge on the constitutional right of access to justice delivered by the courts. If the parties do not agree a resolution at mediation or an assessment by PIAB, or if either side rejects PIAB's award, the claim can be referred to the courts as is currently the case under the legislation. However, the discretion available to the courts in determining costs in certain cases has been tightened. This is a policy approach which is consistent with enhancing 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.

## **5.8 Compliance burden on third parties e.g., citizens and business**

Data from the National Claims Information Database (NCID) shows that legal costs averaged 51% of the compensation cost in the years 2015- 2020, adding substantially to the overall cost of the claim. This compares to legal costs under PIAB of less than 4% of the compensation amount. In addition, the NCID reported that the time taken to resolve claims differed significantly, with claims in 2020 under the litigation model taking on average 4.2 years to settle compared with 2.3 years with PIAB.

The proposed amendments to section 17 of the Principal Act and the introduction of mediation should see more claims settled in a more cost-effective and time-efficient manner. This benefits the claimant, but also should lead to lower cost of claims, which in turn is expected to be reflected in reduced premium levels.

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## 6. Consultation

In March 2021, the Minister for Trade Promotion, Digital & Company Regulation launched a public consultation on new measures to enhance and reform the role of the PIAB.

240 submissions were received from a range of stakeholders including, businesses, representative bodies, legal interests, community and voluntary groups, the insurance industry, and individuals. Responses were received from all sizes of business including SMEs. The outcome of the public consultation process has informed the Personal Injuries Resolution Board Bill 2022. A copy of the Department's public consultation and a report on responses is available on the Department's website [www.enterprise.gov.ie](http://www.enterprise.gov.ie).

Informed by the public consultation the Minister has developed legislative proposals to enhance and reform the PIAB. These proposals as provided for in the Bill include changes to expand the remit of PIAB, ensuring PIAB can make better use of data and the use of mediation in resolving more personal injury cases through PIAB.

The Department has consulted with PIAB and the Attorney General's Office in relation to the development of the provisions set out in the Bill.

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## 7. Enforcement and Compliance

The proposal involves the use of primary legislation. Incorporated in this is a requirement for Oireachtas approval for both the Bill and any future amendments to the Act thereafter.

Under section 12 of the Principal Act, all personal injury claims, (with certain exceptions, such as medical negligence cases), must be submitted to PIAB unless they are settled by the parties involved at an early stage. The Principal Act provides that where the claimant has failed to comply with a request under section 23 and if he or she subsequently brings proceedings, the claimant, at the discretion of the Court may be prohibited from introducing evidence into Court of special damages or information that was available but not submitted to the Board prior to the making of the assessment by the Board.



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## 8. Review

The Department will prepare a post-enactment report, as referenced in Standing Orders of both Houses of the Oireachtas, to review the functioning of an Act 12 months subject to, and following, enactment of the Bill.

The Bill provides that a new function of PIAB will be to collect and provide information relating to personal injuries including information concerning personal injury awards. The impact of reforms as set out in the Bill will be assessed over time on information from PIAB on the resolution of personal injury claims through the PIAB process such as trend analysis of levels of claims submitted to PIAB, assessment rates and acceptance of PIAB awards.

The Bill if enacted will also be periodically reviewed by ascertaining how well the legislation is performing through establishing levels of satisfaction amongst stakeholders.

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## 9. Publication

Following Government approval in February 2022, the Department published the General Scheme and a report on the public consultation on its [website](#).

This Regulatory Impact Analysis will be published on the website of the Department of Enterprise, Trade and Employment (<https://enterprise.gov.ie>)