Insurance Reform

Public consultation on enhancing and reforming the Personal Injuries Assessment Board

**Submission**

As set out in the consultation document, the Department of Enterprise, Trade and Employment is specifically seeking views on enhancing and reforming the Personal Injuries Assessment Board (PIAB).

Please include your response to the questions listed below in the space underneath the relevant option, to set out/ explain your views on each. Completing the template will assist with achieving a consistent approach in responses returned and facilitate collation of responses.

Respondents have the opportunity to highlight any issues which would contribute to the objective of enhancing and reforming the role of PIAB at the end of the template.

When responding please indicate whether you are providing views as an individual or representing the views of an organisation.

Respondents are requested to return their completed templates by email to PIABreform@enterprise.gov.ieby the closing date of **17 April2021**. Hardcopy submissions are not being received at this time due to remote working. Please clearly mark your submission as ‘Public Consultation on enhancing and reforming the Personal Injuries Assessment Board (PIAB)

Any queries in relation to the consultation can be directed to PIABreform@enterprise.gov.ie

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| Name(s): | **xxxxxxxxxxxx** |
| Organisation: | **xxxxxxxxxxxx** |
| Please briefly describe your interest in enhancing/reforming PIAB: | **xxxxxxxxxxxx** |
| Email address: | **xxxxxxxxxxxx** |
| Telephone number: | **xxxxxxxxxxxx** |

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**Submissions or comments are invited in respect of the questions listed below:**

1. **Potential amendments to section 17 of the PIAB Acts 2003-2019**

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| **Question 1 (a)**Do you think there is scope to amend section 17 of the PIAB Acts 2003-2019 to increase the number of claims assessed by PIAB? * *Yes. We endorse proposals to increase the number of claims PIAB is allowed to assess, particularly ‘Section 17’ claims such as psychological injuries; and cases involving non-payment of fees, pre-existing injuries and injuries that take over 15 months to resolve themselves.*

**Question 1 (b)**Do you think there is scope to amend other sections of the PIAB Acts to increase the number of claims assessed by PIAB? * *In view of the fact that the Central Bank National Claims Information Database[[1]](#footnote-1) shows that legal costs come to approximately 63% of awards in cases less than €100,000, require that claimants who refuse to accept a PIAB assessment must be awarded 150% (or more) of that assessment value in court if they are to be awarded their costs.*
* *Claimants who wish to take a case to court should be required to lodge 50% of the claim value with PIAB before they are permitted to proceed to Court. This could be used to defray the costs of a successful defendant who successfully defends a case. Such lodgement could be by way of bond, or a contractual undertaking from the plaintiff’s solicitor.*

**Question 1 (c)**Do you think there are non-legislative changes that could be made to increase the number of claims assessed by PIAB?* *We would welcome a direct communications programme that makes clear to plaintiffs and respondents the benefits of settling via PIAB and the potential consequences of non-engagement or rejection of a PIAB assessment.*
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1. **An enhanced role for PIAB**

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| **Question 2 (a)**Would a mediation process provided by PIAB bring benefits for claimants and respondents and help increase the number of cases administered through the PIAB system? * *We would welcome the introduction of mediation subject to concerns regarding the impact on timing and cost of delivery on PIAB settlements.*
* *There needs to be an incentive to encourage use of the mediation service, rather than to default to court resolution where mediation does not work.*

**Question 2 (b)**In what other ways do you think the services provided by PIAB could be enhanced or reformed to incentivise greater use of the PIAB model?* *The service provided by PIAB would be greatly enhanced if litigation were to commence with the exhibition of the PIAB claim, to verify that the same claim is being made in Court. If it is not, then the claim should be sent back to PIAB.*
* *A PIAB claim that progresses to the assessment stage should be sworn on affidavit by the plaintiff.*
* *The PIAB claim initiated by the plaintiff should form the grounding document for the statement of claim in court if the plaintiff pursues the litigation route, and the plaintiff must explain any deviation between the claim as initiated with PIAB and that presented before court.*
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1. **Expanding the use and publication of data held by PIAB**

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| **Question 3 (a)**Would providing for greater levels of data to be collected and reported on by PIAB be useful in ensuring a fair and predictable insurance system and in areas such as accident prevention?* *We would endorse the use and publication of data held by PIAB covering issues such as accident type or injury type which might be of value to incoming insurers; and settlement trends, which would be of use to Government in policy development.*
* *We propose that PIAB assumes ownership of* [*InsuranceLink*](http://inslink.ie/)*, the claims register currently owned by Insurance Ireland; and develop it for the purposes of fraud prevention.*
* *In order to combat fraud, plaintiffs should have a unique number (PPS or other) assigned to them, so that trends in repeat claims can be discerned.*

**Question 3 (b)**Is there scope to use PIAB data for the purposes of fraud detection?* *See above regarding the InsuranceLink database*.

**Question 3 (c)**Would there be a benefit in PIAB being mandated to record details of all personal injury settlements agreed in the State?* *It is essential for reasons of public policy, competition, health & safety and fraud prevention that details of all personal injury settlements agreed in the State be recorded, analysed and published.*
* *PIAB is the natural repository for this data, given its founding legislation, its role in the Irish personal injury sector and its experience and expertise in this area.*
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1. **Additional comments**

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| **Question 4**Please provide any additional comments you may wish to make to inform the development and direction of policy on enhancing and reforming the role of the Personal Injuries Assessment Board.* *We propose the establishment of PIAB as a quasi-judicial unit with the powers to adjudicate on claims, so that claims can only be appealed to the courts on a point of law. This situation already exists with the WRC, Hep C and HIV Compensation Tribunal, Residential Tenancies Board, and Criminal Injuries Compensation Tribunal.*
* *The conclusion of the Zalewski-v-WRC case in the Supreme Court addresses the material issues with proceeding along these lines, and there is no continued justification with initiating all contested personal injuries cases in the courts.*
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The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

**General Data Protection Regulation**

Respondents should note that the General Data Protection Regulation (‘GDPR’) entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

* Lawfulness, fairness and transparency;
* Purpose limitation;
* Data minimisation;
* Accuracy;
* Storage limitation;
* Integrity and confidentiality;
* Accountability.

The Department of Enterprise, Trade and Employment is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

**22 March2021**

1. [National Claims Information Database November 2020](https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/national-claims-information-database/private-motor-insurance-report-2-ncid.pdf?sfvrsn=9) [↑](#footnote-ref-1)