

## The latest developments

### Cost of Insurance Working Group report

The Minister for Justice recently launched the Eight Progress Update Report (the “**Report**”) from the Cost of Insurance Working Group (the “**Group**”). The Report is the latest in a series of reports outlining the progress of the Group’s workings. Whilst the Report deals in the main with the costs of motor insurance and the costs of employer and public liability insurance, it provides some important information on the introduction of Pre-Action Protocols (“**PAPs**”) in clinical negligence actions.

In this note, we look at the high-level points of the Report.

#### Background to the Group

The Group was established in 2016 to examine factors contributing to the rising cost of insurance premiums in Ireland. The Group produced 33 recommendations in 2017 in relation to motor insurance, and a separate 15 recommendations in relation to employer and public liability insurance in 2018. The Report provides an update on the implementation of those recommendations. Future updates will be provided on a biannual rather than a quarterly basis.

#### Legislative updates

The Report references a number of significant pieces of legislation in the field of personal injuries that have been brought onto the statute book in the recent past, these include:

- The Personal Injuries Assessment Board (Amendment) Act 2019 that was recently enacted. A commencement order is awaited to bring the Act into operation. The Act provides for a review of the Book of Quantum at least once every three years by the Personal Injuries Assessment Board (“**PIAB**”). The Act also allows the court to make adverse costs orders where there is non-compliance with a request from PIAB for information or documents during the assessment of a relevant claim.

- The Central Bank (National Claims Information Database) Act 2018, which provides for the establishment and administration of a national claims information database by the Central Bank, was brought into operation in January 2019. The Act also amends the Civil Liability and Courts Act 2004 with regard to personal injuries actions:
  - reducing the time period to one month from the date of accrual of the cause of action within which a claimant must serve a letter of claim on the alleged wrongdoer.
  - in respect of the filing of Affidavits of Verification, such that the court can make adverse costs orders in respect of a failure to comply with the provisions for its filing.



## Clinical negligence actions

According to the Report, the Government's intention is to bring Part 15 of the Legal Services Regulation Act 2015 (the "**Part 15**") into operation imminently, in Q2 2019.

Part 15 provides for the introduction of PAPs in clinical negligence actions. The 2015 Act inserts a new definition of 'clinical negligence actions' into the Civil Liability and Courts Act 2004, as an action for damages for clinical negligence. 'Clinical negligence' in turn is defined as anything done or omitted to be done in the provision of a health service by a health service provider in circumstances which could give rise to a liability for damages for negligence in respect of personal injuries or death.

Part 15 also increases the limitation period under the Statute of Limitations (Amendment) Act 1991 for clinical negligence actions from two years to three years from the date of accrual of the cause of action or date of knowledge, if later.

## Book of Quantum and Guidelines for General Damages

The recommendations in relation to the Book of Quantum are categorised in the Report as completed as they have been superseded by the introduction of the PIAB (Amendment) Act referred to above and by the recommendations of the Personal Injuries Commission (the "**PIC**"). The PIC, was established in January 2017 on foot of the Group's recommendations, and was tasked with investigating personal injuries compensation awards in other jurisdictions and benchmarking against Irish personal injuries awards. The PIC produced its final report in September 2018 (the "**PIC Report**"). The PIC Report recommended that the Judicial Council, which is due to be established under the Judicial Council Bill 2017 (the "**2017 Bill**"), should be tasked with compiling guidelines for appropriate general damages award levels for personal injuries.

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The 2017 Bill remains at early stages of the legislative process, and it is unlikely to be enacted in the near future. In those circumstances, the government recently requested the Chief Justice to devise a process involving members of the judiciary, PIAB, and the Department of Justice, to deliver interim guidelines for soft tissue injuries which can be published by PIAB. Further developments are awaited.

## Contact

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