

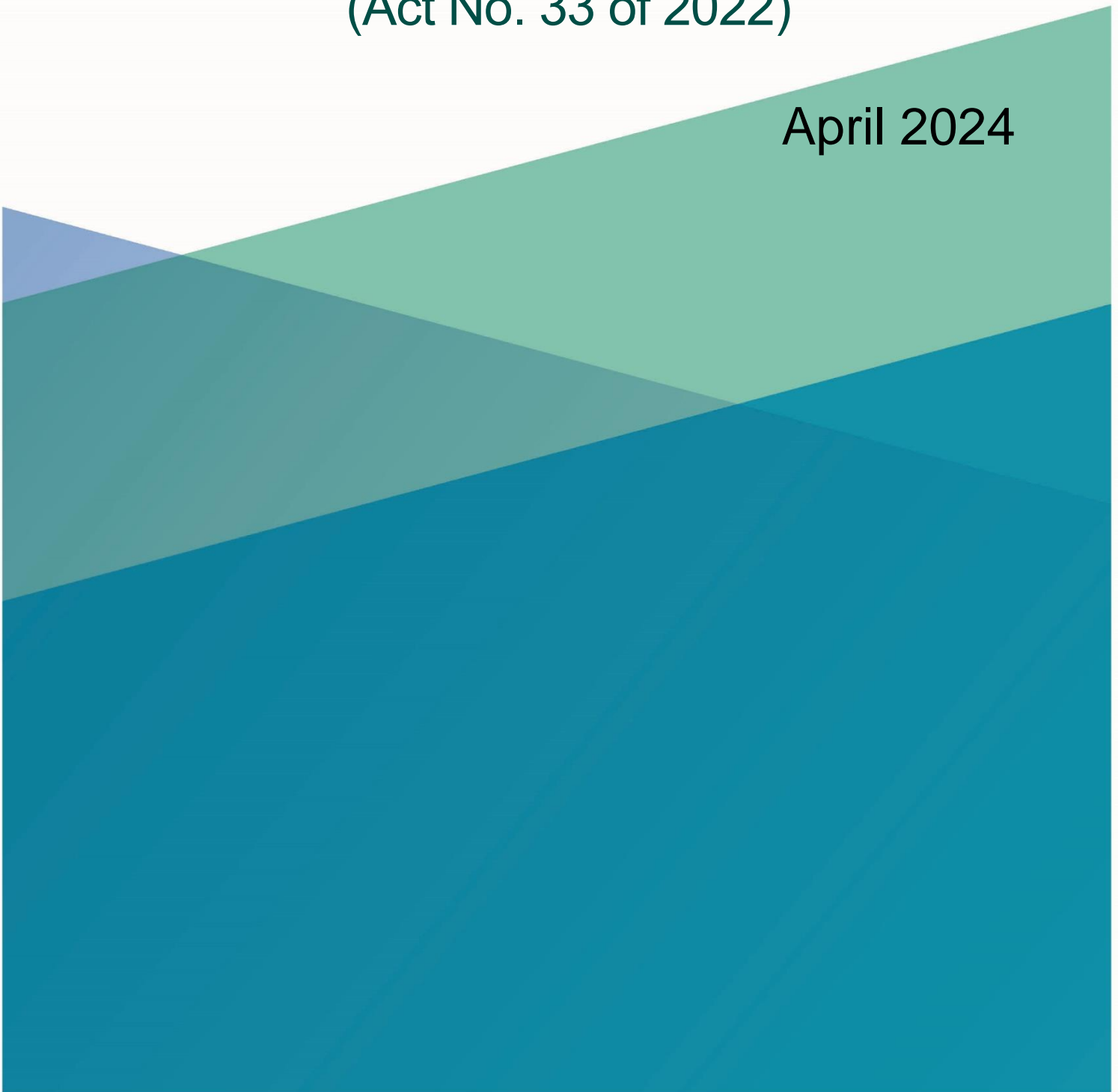


An Roinn Dlí agus Cirt  
Department of Justice

# Post-Enactment Report

## Garda Síochána (Compensation) Act 2022 (Act No. 33 of 2022)

April 2024



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## 1. Introduction

The Garda Síochána (Compensation) Act 2022 was signed into law by the President on the 24th October, 2022. The Act of 2022 repealed and replaced the Garda Síochána (Compensation) Acts 1941 to 1945 which were the legal basis for Garda Compensation claims. The Act was commenced in full by Ministerial Order on the 10<sup>th</sup> April 2023. ([S.I. No. 163 of 2023](#)).

## 2. Policy Objective

The main purpose of this Act was to modernise Garda compensation claims and allow for a more efficient process to replace the old compensation scheme.

The former Garda Síochána Compensation Acts 1941-45 (1941-1945 Acts) provided for compensation in respect of injury (including fatal injury) which was maliciously inflicted on a Garda Member while they were on duty or in connection with their duty. The old scheme allowed for an injured Member, (or in the case of death, their specified dependents), to make an application to the Minister for authorisation for leave to apply to the High Court for compensation. Most actions then proceeded on a “no fault basis”. Both parties required legal representation in the High Court and the costs arising from this were/are borne entirely by the State.

This Act repealed the 1941-1945 Acts and brings Garda compensation claims within the Personal Injuries Assessment Board (*now the Personal Injuries Resolution Board – PIRB<sup>1</sup>*) process. All claims are made to the Garda Commissioner and claims approved are submitted directly to PIRB<sup>2</sup> for an objective assessment of quantum. The Act sets out clear timelines in relation to each stage of the process. The objective was to decrease the length of time it takes for a Garda Compensation claim to get from initial application to award, to provide avenues for settlement and resolution at

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<sup>1</sup> Any reference to the Personal Injuries Resolution Board or PIRB, should be construed as referring to both the Personal Injuries Resolution Board, and the Personal Injuries Assessment Board.

<sup>2</sup> PIRB have a well-established system for processing injuries claims and have recently introduced mediation to reach settlements quicker.

the earliest possible stage and to lower legal and administrative costs associated with the process.

### 3. Operation of the Act

The main operational aim of the new model is to provide for more efficient resolution of claims for compensation by current and former members of An Garda Síochána and their dependents. An Garda Síochána, The Personal Injuries Resolution Board, Department of Enterprise, Trade and Employment and the State Claims Agency (who represent the Garda Commissioner in such claims) have provided the information below in respect of the operation of the Act and its implementation.

#### **Implementation**

The Personal Injuries Resolution Board, Department of Enterprise, Trade and Employment and State Claims Agency have all indicated that the process and flow of data to the Personal Injuries Resolution Board is quite streamlined, is progressing well and that their experience in managing the Scheme has been positive to date. An Garda Síochána highlighted that the appointment of an Assistant Principal Officer<sup>3</sup> brings a continuity in the management of all Garda Compensation Claims for malicious injury.

#### **Impacts on Implementation**

An Garda Síochána have advised that the commencement of the 2022 Act, was impacted by the implementation of the Personal Injuries Resolution Board Act 2022<sup>4</sup>. The first claim under the 2022 Act was submitted to the Personal Injuries Resolution Board on 11 May 2023, however, PIRB were not in a position to start assessing these claims until January 2024 due to their prioritisation of work implementing and commencing this PIRB Act.

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<sup>3</sup> The Assistant Principal Officer was the former Deciding Officer under the 1941-1945 scheme and appointed as a Reporting Officer under the new scheme.

<sup>4</sup> The Act amends the Personal Injuries Assessment Board Act 2003 -2019 to increase the number of personal injury claims settled through PIRB and to reduce the expense and time associated with personal injuries litigation.

The Personal Injuries Resolution Board, and Department of Enterprise, Trade and Employment have further advised that they are still considering legal issues around double recovery, multi cause applications, recoverable benefits and their interaction with the assessment process.

### **Transitional Arrangements**

Transitional arrangements were provided for in this Act for claims that were awaiting finalisation. Where an authorisation had been granted by the Minister under the 1941-1945 Acts, these cases proceed as though the old Acts remain in place, and where an authorisation had not been granted, those applicants were directed to the new process.

At the time of the commencement of this Act on 10 April 2023, there were approximately 850 claims which were authorised by the Minister for Justice to go forward to the High Court for assessment. These cases will proceed as though the old Acts remain in place.

There were a further possible 767 claims, where a decision was not made by the Minister for Justice that could be submitted to the Garda Commissioner under the new scheme. An Garda Síochána have advised that of the 767 possible claims that could have been submitted under the new scheme, a total of 562 fully complete applications were submitted to them under the new regime from the 1941-1945 compensation scheme (dates of injury 2002 - 06 April 2023) with 6 complete applications with a date of injury prior to 10 April 2023 which were not submitted under the 1941-1945 compensation scheme.

An Garda Síochána acknowledged the Assistant Principal Officer<sup>5</sup> was instrumental in fulfilling the obligations set out in Section 5 of the Act with regard to applications transitioning over to the Garda Commissioner.

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<sup>5</sup>The Assistant Principal Officer was the former Deciding Officer under the 1941-1945 scheme and appointed as a Reporting Officer under the new scheme.

## **Legal Costs**

There was no requirement by the injured Garda Member to engage legal representation to submit a claim for compensation to the Minister for Justice, under the 1941-1945 Acts. However, this practice evolved over time, leaving the Garda Member liable for paying their own legal costs.

In circumstances, whereby the Minister issued an Authorisation Certificate, a legal representative could then recoup their reasonable legal costs when a case was finalised in the High Court. Where claims were not authorised to proceed to the High Court, Garda members were liable for payment of their own legal costs. This is the situation regarding cases not authorised under the old scheme at the time of commencement (10 April 2023) of the new scheme.

In an effort to address any anomaly, the Department of Justice, in conjunction with An Garda Síochána, agreed on an ex-gratia basis to the payment of reasonable legal costs for such claims. Sanction was received from the then Department of Public Expenditure and Reform to approve the payment of a maximum of €1,494.45 (inc VAT at 23%) by the Garda Commissioner. The majority of legal representatives have agreed to accept the sanctioned payment and payments continue to be processed by the Compensation Unit in An Garda Síochána.

An Garda Síochána have also noted that as of 31 January 2024, 106 claimants have submitted their application without legal representation and 560 claimants have engaged a legal representative to manage their claim. They expect this trend will reverse by the end of the year, as they continue to create awareness of the benefits of the new scheme.

## **Applications**

An Garda Síochána have advised that the number of completed claims that have been lodged, examined and submitted to PIRB for assessment is double the annual numbers authorised by the Minister for Justice in the last 5 years. This significant increase is due to the strict statutory time limits for a final determination under the 2022 Act, but also due to existing claims being resubmitted from the old scheme.

It was expected that there would be a large number of new claims submitted to the Garda Commissioner following the commencement of the 2022 Act on 10 April 2023. However, this has not happened and to date 64 new claims<sup>6</sup> have been received. Significant outreach work including the preparation of Frequently Asked Questions, intranet bulletins and updates, by An Garda Síochána continues to inform members about the scheme.

### **Time from Application to Award**

Under the 1941-1945 Acts decisions took anywhere from 3 months to over 10 years for a final decision to be made<sup>7</sup>. Under the 1941-1945 system, all cases authorised by the Minister for Justice to go forward to the High Court for assessment continue to be managed by the CSSO. As there are only 3-4 of these claims being assessed in the High Court on a weekly basis, it may take up to 5 years to assess all of these claims.

Under this Act, there are now clear statutory time limits for making a final decision for each claim and an injured member will receive a final decision within 6.5 months once an eligibility notice is issued. The Personal Injuries Resolution Board have advised that there have been no assessments to date, but all applications remain within the assessment timelines. They expect to finalise assessments over the coming weeks.

It is hoped that injured members will receive compensation within 9-12 months of submitting a claim under the 2022 Act.

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<sup>6</sup> This number includes claims where the date of injury occurred before 10 April 2023 but were not submitted under the 1941-1945 Acts and also claims for injury sustained after the date of commencement.

<sup>7</sup> Decisions were dependent on receipt of medical reports, investigation reports and assessment of injured members by the Garda Chief Medical Officer.

