

Blueprint to Deliver A World-Class Workplace Relations Service

April 2012



An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

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Foreword by Mr Richard Bruton, T.D, Minister for Jobs, Enterprise and Innovation

World-class Workplace Relations Service

The top priority of the Government is to get Ireland back to work. To achieve this, the Government is committed to making Ireland the best small country in the world in which to do business. Promoting and supporting harmonious relationships in the workplace is an important element in achieving lasting economic growth and creating and sustaining jobs. To support this objective we must have efficient and effective mechanisms to develop harmonious and productive workplaces and to assist employers and employees to avoid disputes. Where disputes do arise the parties must be encouraged to work together to resolve them. Where this is not possible and State intervention is necessary the services must be provided in the most efficient, effective and professional manner, to the highest standards.

In line with the commitments in the Action Plan for Jobs, I am proceeding to reform our statutory workplace relations structures and processes. I am committed to delivering a world-class workplace relations service and I am taking the necessary action to deliver just that.

I am determined that the new structures and systems that we design will be ones that we and future generations can be proud of. While the reform will bring about major improvements, it will incorporate the best practice elements of existing dispute resolution bodies. My aim is to provide a simple, independent, effective, impartial, cost effective and workable means of redress and enforcement, within a reasonable period of time. The system must operate to the highest standards and earn the confidence of employers, employees and all who will use it.

This year we will spend around €20m of taxpayers' money on the five existing employment dispute resolution bodies. This is a very significant investment by Government and we must ensure that we are getting the best possible value for money. My aim is to effect significant savings in future years while at the same time providing a greatly enhanced service.

The need for reform

When I came into office last year I identified the need to reform the State's workplace relations structures and procedures as a key priority. The problems had been well documented and the issues had been extensively reviewed in eight reports in as many years. The system was so complex that even practitioners had difficulty understanding and accessing it. There were, and in some cases still are, long delays scheduling hearings and further delays in issuing decisions. This is not an acceptable level of service.

While there are excellent and committed people working in the various bodies, often with challenging workloads, clearly the system itself was not performing and had to be changed. It was clear to me that the time for action had come. That was why I signalled my intention to undertake major reform of the structures and processes last July.

Progress to date

I am happy to report that substantial progress has been made since then and that all the targets I set out at that stage have been met. In terms of building the new model a number of important priority actions that I identified last July have been successfully delivered within the target timescale.

Single Contact Portal

A new single contact portal called “Workplace Relations Customer Services” is fully operational since the beginning of this year. This provides a single point of entry into the system for employment rights and industrial relations information. It receives and logs all first instance complaints and has dealt with over 3,500 complaints in the period from January to the end of March. Complaints are now acknowledged and the employer is also notified within five working days of the complaint being lodged. Prior to the introduction of the Workplace Relations Customer Service this process was taking up to eight months in some cases.

This prompt notification increases the likelihood of employers and employees resolving issues sooner. The introduction of this service has also assisted in reducing the backlog for Rights Commissioner hearings and as a result there is now no backlog.

Single Complaint Form

A Single Complaint Form that deals with over 100 first instance complaints was launched on the 4th of January this year. It has replaced the 30 forms previously in use. Over 70% of all complainants in March used the new form. An enhanced and improved version of the form was made available at the end of March. This incorporates feedback received from users and stakeholders. Work has also commenced on the development of a version of the Single Complaint Form which can be submitted online. This will be available later this year.

Workplace Relations Website

The new workplace relations interim website www.workplacerelements.ie went live on 4th January this year. This Website brings together, in one place, information on all aspects of employment rights and industrial relations. Work has commenced on delivery of an enhanced and interactive Website. This will replace the current five websites of the existing bodies later this year.

Early Resolution Service

Delivery of a pilot Early Resolution Service has commenced. This service will assist parties to a dispute to resolve the issue themselves with the assistance of a Case Resolution Officer. Participation in the service will be voluntary for both the complainant and the respondent. Parties availing of the Early Resolution Service will not be disadvantaged if they do not reach agreement. They will not lose their "place in the queue" nor the right to have their issues dealt with by means of hearing, if appropriate.

A number of Officials of my Department have participated in intensive training as Case Resolution Officers and have commenced delivery of the pilot service. The pilot will be evaluated and the outcome of the evaluation will inform the design of the mainstream service to be provided by the Workplace Relations Commission in the future.

Next Steps

My intention is to continue to progress the reform programme. The next major step is to establish a two-tier Workplace Relations structure. This means that from the end of this year two statutorily independent bodies will replace the current five. We will have a new single body of first instance to be called the Workplace Relations Commission and a separate appeals body, which will effectively be an expanded Labour Court.

Work has commenced on the drafting of a Workplace Relations Bill to give effect to this new structure. I intend to have this legislation enacted by autumn this year. The legislation will provide for the orderly wind down of the LRC, NERA, the EAT and the Equality Tribunal and the transfer of the services of the LRC, NERA and the Equality Tribunal together with the first instance functions of the EAT and the Labour Court to the Workplace Relations Commission. The appellate functions of the EAT will be amalgamated into a reconfigured Labour Court.

All first instance complaints will be made to the Workplace Relations Commission where three options for resolving complaints will be available – early resolution, inspection and adjudication. All appeals will be to the Labour Court with the only further appeal being to the High Court on a point of law.

Consultation

Last Autumn I undertook a full consultation with stakeholders and I was heartened by the extent to which there was consensus around the need for reform and the shape that reform should take. The many positive suggestions that emerged from that process have informed the design and delivery of the reform to date, including aspects of this Blueprint. We have also examined best practice internationally in this area.

I am publishing this Blueprint in order to provide a further opportunity for consultation. I am inviting a dialogue on its contents with the Oireachtas Select Sub-Committee on Jobs, Enterprise and Innovation. I am also open to constructive suggestions and advice from all interested parties. These contributions will help inform our finalisation of the Heads of the Workplace Relations Bill.

Conclusion

I wish to thank all those who have contributed to the process so far, in particular those who have worked so hard to deliver the progress achieved, including the team in the Project Office, my officials and the Boards, Chief Officers and staff members of the five employment bodies.

I look forward to your continued support and cooperation as we develop a world-class Employment Rights and Industrial Relations system that we can be proud of and that will serve future generations well.



**Richard Bruton TD,
Minister for Jobs, Enterprise and Innovation
April 5th 2012**

This document together with any observations received will inform the drafting of the Workplace Relations Bill which will give effect to the reform. Please see Section 11 on the type of submissions sought.

Views are requested by the 30th of April 2012

Submissions may be sent:

by email to: WRProjectOffice@djei.ie

by post to: Mr Jason Kiernan,
Room 315
Department of Jobs, Enterprise and Innovation,
Davitt House,
65a Adelaide Road,
Dublin 2

It is proposed to publish all responses on www.workplacerelations.ie after the closing date for receipt of submission.

1. Executive Summary

This document sets out, in considerable detail, how Minister Richard Bruton's reform of the workplace relations structures and processes will be achieved. The document also provides a further opportunity for interested parties to contribute comments and feedback on the future design of the State's workplace relations structures.

The new system will be characterised by a number of key principles which aim to:

- ❖ Promote harmonious workplaces and a culture of compliance with employment law
- ❖ Reduce the number of disputes within the workplace and, where they do arise, provide assistance to resolve them at the earliest possible date
- ❖ Deliver a responsive user-friendly service
- ❖ Deliver value for money for the tax payer and reduce costs for employers and employees

The Minister proposes to replace the current complex and outdated system with a simpler more efficient and user-friendly two-tier structure with simplified procedures. This reform will deliver a modern, user-friendly, world-class employment workplace relations system that will provide significant benefits for its users and society as a whole. The reform will make a significant contribution to better business regulation, employee relations and public service reform.

The model that is now being designed will deliver:

- One authoritative source of good quality, clear, up to date information and a strong emphasis on assisting employers and employees to avoid disputes and where they do arise to assist them in resolving the dispute themselves
- Maximum opportunities for early resolution of disputes, as close as possible to their point of origin. The intention is to move from the default position that every individual complaint, no matter how large or small, must always result in a time-consuming and expensive formal hearing
- A single Body of First Instance to adjudicate on all complaints, with a single route to appeal, together with common time limits for lodging complaints and appeals
- A just, fair and efficient adjudication service provided by independent, professional and impartial decision-makers with a target period of three months from the time of complaint to hearing, and written, reasoned decisions within 28 working days of the hearing with published decisions
- New compliance mechanisms to encourage compliance with employment law and to deal with non-compliance in a more efficient and proportionate manner

- A more open and transparent system of appointing people as decision-makers, that will ensure highest standards in terms of appointments
- Procedures and administrative processes that are efficient and simple to use
- A Customer Charter with specific commitments with regard to the quality and efficiency of the service that users can expect. These will be supported by service level targets to ensure quality, consistency and timeliness of services

The key improvements proposed to be delivered by the end of this year are set out in summary in Table 1 below. Each is explored in detail in subsequent sections of this Blueprint.

Table 1 Key Improvements that will be delivered by the end of 2012

Situation Prior to Reform	Situation By End 2012
Five Workplace Relations Bodies	Two Workplace Relations Bodies
Five Websites	One Website
Five separate corporate and administrative systems	A Single Joint Services Arrangement
30 First instance paper based complaint forms	A Single First Instance Complaint Form with full on-line functionality
20 paper based appeal forms	A Single Appeal Form with full on-line functionality
First instance complaints can be lodged to five separate bodies. In some cases a complainant is required to submit complaints to more than one body.	The Workplace Relations Commission will deal with all first instance complaints
Three separate avenues of appeal	One appeal route
Time limits and criteria for extending the time limit for making complaints vary under different legislation	A common time limit of six months for initiating all complaints requiring adjudication and consistent criteria under which such time limits may be extended to twelve months in exceptional circumstances will apply across all legislation
Time limits for making appeals vary under different legislation	A common period of 42 days for lodging appeals will apply across all legislation
Long delays in acknowledging complaints (up to eight months in some cases)	All complaints will be acknowledged within five working days

Situation Prior to Reform	Situation By End 2012
Long delays notifying employers of complaints lodged against them (up to eight months in some cases)	Respondent will be notified of complaint within five working days of complaint being lodged
All complaints subject to adjudication hearing	Early Resolution Service available to assist resolution between parties without an adjudication and a Registrar function will be introduced to deal with complaints which are out of time or incorrectly grounded
Waiting periods of up to two years for adjudication hearings	Target will be to schedule hearing within three months of complaint lodged
Long waiting periods for some first instance adjudication decisions	90% adjudication and appeal decisions to be issued in writing within 28 working days
No reason given for some first instance adjudication decisions	All adjudication and appeal decisions will set out reasons in writing
Lack of access to some first instance decisions	All first instance and Appeal decisions will be published on www.workplacerelations.ie
System inefficient and wasteful of resources	Efficient systems will be in place which will deliver significant savings
Insufficient use of technology leading to poor levels of service	Better service and user interfaces will be in place, particularly through the provision of electronic services
The only enforcement mechanism available to deal with non-compliance with certain employment legislation is criminal prosecution which can be disproportionate, time consuming and expensive	A new compliance model with more proportionate, efficient and less expensive mechanisms such as Compliance Notices, Labour Court Orders and Fixed Charge Notices will be introduced to reduce the need to resort to prosecution

A diagram depicting the existing Employment Rights and Industrial Relations Compliance and Redress system is set out in Appendix 1 and the planned new Compliance and Redress Model is set out in Appendix 2.

2. The Two-Tier Structure

The new structure will comprise two statutorily independent bodies namely:

- The Workplace Relations Commission (WRC) and
- The Labour Court

The WRC will be managed by a Chief Executive who will be supported by the Workplace Relations Commission Board. The Labour Court will comprise the Chairman, Deputy Chairs and Ordinary Members.

These will be two statutorily independent bodies with separate functions in relation to employment rights and industrial relations. While the Workplace Relations Commission and the Labour Court will be statutorily independent of each other and entirely separate and independent in their decision-making they will share many common features and joint services.

The functions of the new Workplace Relations Commission will comprise those currently undertaken by the LRC, NERA, the Equality Tribunal and the first instance functions of the EAT and Labour Court in addition to an early resolution service for individual complaints. The WRC will also have general responsibility for promotion and improvement of industrial and employment relations and the current Advisory and Conciliation Services of the LRC.

The Labour Court will continue to deliver all of its existing services (other than the small number of first instance functions transferring to the WRC) in addition to taking on the appellate functions of the EAT and a role in relation to dealing with appeals and enforcement of Compliance Officers' notices¹.

Workplace Relations Commission High Level Structure

During last autumn's consultation process and in representations since then a view was expressed that there is a need for clear and visible separation between some of the functions the WRC will deliver. There is no doubt that some of the functions of the WRC will require some organisational distance from each other. This will be achieved through clear and appropriate delineation between the functions and the implementation of strict protocols in relation to access and use of data. Where necessary this will be done through statutory provision. It will, however, be done in a way that does not dilute the benefits of shared services, administration and management systems.

The high level structure of the WRC has been designed to accommodate the need to share services while at the same time keeping a certain distance between some of the functions.

¹ See Section 3.5 regarding Compliance Officers (formerly NERA Inspectors) and Compliance Notices

This will ensure fair procedures and transparency in the delivery of services. For example a clear division of roles, responsibilities and processes will be established in the provision of information, early resolution, adjudication and inspection services.

To achieve this, the Workplace Relations Commission will comprise the following six separate high-level functional areas:

1. Advisory and Information Service (AIS)
2. Registration Service
3. Conciliation and Early Resolution Service (CERS)
4. Adjudication Service
5. Compliance & Enforcement Service (CES)
6. Corporate and Strategic Service (CSS)

Labour Court High Level Structure

The Labour Court will comprise the Court membership arranged in four divisions supported by Court Secretaries. Legal services to the Court will continue to be provided through the Labour Court Registrar.

3. Workplace Relations Commission Services

The Workplace Relations Commission will develop and deliver a suite of high quality and responsive services. It will deliver a marked and measurable improvement in the quality of services provided to users of the State's workplace dispute resolution services including better and faster vindication of employees' rights and entitlements delivered through a modern, user-friendly service.

Details of the services that will be provided by the six functional areas of the WRC are set out below.

3.1 Advisory and Information Service

The general consensus from last autumn's consultation responses was that a specialised non-directive information service providing information to both employers and employees is an essential element in facilitating early resolution of grievances and stemming the flow of complaints.

Such a service will be provided by the WRC Advisory and Information Service (AIS). It will combine the functions currently performed by the LRC Advisory Service (including code of practice functions), NERA information service and the information functions currently carried out for the Equality Tribunal, EAT, Labour Court and Rights Commissioners Service.

It will also incorporate the proactive information functions of NERA and the advisory functions carried out by the LRC in relation to informing and advising employers and employees in respect of employment matters with a particular emphasis on complying with employment law and avoiding and resolving disputes. Such information or advice will not extend to the merits or otherwise of individual complaints or cases. In addition, the research role of the LRC will be incorporated into this service.

Assistance to employers and employees

The service will assist employers and employees to build and maintain positive working relationships and will work with them to develop and implement on-going effective mechanisms for building harmonious relationships and solving problems. This service will be available to employers, employees and trade unions in non-dispute situations to develop effective industrial relations and equality practices, procedures and structures that best meet their needs.

Codes of Practice

The service will prepare draft codes of practice concerning industrial and employment relations for submission to the Minister, either on its own initiative or at the request of the Minister. It will also offer guidance and help resolve disputes that may arise concerning the implementation of these codes.

Information

The Advisory and Information Service (AIS) will also provide an online and telephone information service to employers and employees in respect of all employment matters including employment law, customer service support and scheduling information.

The service will build on the Workplace Relations Customer Service launched in January 2012 to become the only contact number, website or email that an employer, employee or their representative will need to know or use in relation to seeking information or assistance with an employment related query.

Staff of this service will have appropriate levels of access to the customer relationship/case management system to allow them to deal with all enquiries including details relating to scheduling of hearings or appeals and related matters.

They will not, however, have access to details which are relevant only to a Workplace Relations Commission Adjudicator. Similarly neither the WRC Adjudicator nor the AIS staff will have access to any matters relating to attempts at early resolution. Levels of access to electronic and physical files will be controlled through appropriate protocols.

Resolving Disputes at Workplace Level

There was strong consensus in last autumn's consultation responses that employers and employees need assistance to resolve disputes at workplace level. While it was acknowledged that the work of NERA and the LRC has been helpful to date in this regard there was a clear view that more needs to be done.

The WRC will assist employers and employees to avoid or resolve disputes within the workplace. The provision of complete, clear and unambiguous employment information and making employers and employees more aware of the supports available to them will be an important element of the work of the WRC.

The new Workplace Relations Website www.workplacerelations.ie and the Information Service will provide accessible, user friendly and comprehensive information. This will include information on rights and responsibilities. New services will include an online tool to aid employers to develop written terms and conditions of employment to fulfil their obligations under law and foster good relations with their employees. The WRC will also provide assistance in developing other policies and procedures.

The Code of Practice: Grievance and Disciplinary Procedures, S.I. No. 146 of 2000, (under the Industrial Relations Act 1990) will be revised to take into consideration the small owner-managed business. Its use will be promoted and further strengthened.

Employers will be encouraged to supply employees with clear grievance and disciplinary procedures and simple codes of practice for dealing with disputes as they arise. These will be available to download free of charge for employers on www.workplacerelements.ie in the form of a generic set of policies and procedures capable of customisation for their particular circumstances. Having such policies will assist employers and employees to resolve issues informally through a variety of clearly defined steps before proceeding to a more formal process.

The system where employers were often unaware of an employee's dispute until they received documentation from the relevant employment rights body, sometimes months after the complaint was lodged, was not acceptable. The fact that employers will now be notified of the details of any complaint lodged against them within five days will provide an opportunity to resolve the matter at an early stage.

Employees will be encouraged to seek to resolve complaints directly with their employer in the first instance and where possible to provide employers with notification of their intention to make a complaint to an employment rights body before the complaint is lodged. To assist employees in requesting that a matter be resolved by their employer prior to lodging a complaint to the WRC template letters/forms will be made available through www.workplacerelements.ie which employees can use for this purpose.

The specific functions of the AIS will include:

- Devising and delivering education, awareness and information programmes
- Providing an advisory service promoting best practice in the workplace
- Providing employment information by phone and electronic methods
- Carrying out Industrial Relations Audits
- Conducting appropriate research
- Establishing Joint Working Parties
- Implementing Frequent Users Initiatives
- Preparing and supporting the implementation of Codes of Practice

3.2 Registration Service

Registrar

The Registration Service will be supported by a Registrar who will be a full-time officer of the Commission and a qualified and experienced lawyer. The Registration service will be responsible for the receipt, validation and processing of all employment related complaints and coordination and management and referral of cases to Hearing, Inspection and Early Resolution services.

It will have overall responsibility for steering the case through the system and ensuring it is dealt with efficiently and effectively.

Complaints Management

The Registration Service will be central to the whole complaints management process. It will ensure complaints are directed in the most effective and efficient way through the system. They will check complaints on receipt and reject or redirect incomplete complaints, complaints which are out of time or which are incorrectly grounded. It will refer suitable cases to the Early Resolution Service. Cases which have not been resolved by the Early Resolution Service will be referred back to Registration which will either schedule a hearing or refer the case for inspection.

The Registration Service will keep to a strict timetable for progressing complaints. It will identify cases which on their face appear to be outside jurisdiction, for example cases which appear to be out of time or do not identify a ground of complaint provided for in legislation. Provision will be made in the legislation for the Registrar to consider what if any further action is merited in such cases. Where the Registrar proposes to dismiss such a case without submitting it for a hearing the parties will be given an opportunity to make written submissions to the Registrar on the matter prior to a final decision.

Where a decision to dismiss without a hearing is reached, such decision, and the reason for the decision, will be communicated to both parties in writing by the Registrar. This communication will include details of the appeals processes. Provision will be made for an appeal to the Labour Court where the Chair or a Deputy Chair sitting alone shall consider the appeal based on written submissions. The Labour Court will be empowered to either dismiss the matter or refer it to the WRC for a hearing.

The staff of the Registration Service will also manage the receipt of appeal applications on behalf of the Labour Court as part of the Joint Services arrangement (see Section 9 Joint Services). However, the Labour Court will be responsible for case management thereafter, and for all matters relating to the hearing of appeals.

The Registration Service will also be responsible for maintaining reports and statistics on where the cases are, and be responsible for smooth progression and removing any blockages in the system.

3.3 Conciliation & Early Resolution Service

Early Resolution Service

The almost unanimous view in responses to the consultation process was that early intervention in employment disputes yields positive results, is cost-effective from everyone's point of view, and should happen as early as possible.

The WRC will offer an Early Resolution Service in certain cases where complaints are lodged. It will also be open to the parties to request this service. Participation in the service will be voluntary for both the complainant and the respondent. Parties availing of the Early Resolution Service will not lose the right to have their issues in dispute dealt with by means of inspection or a hearing as appropriate to their case. Nor will they be disadvantaged in relation to their “place in the queue” for inspection or a hearing. Where the service is availed of the aim will be to complete the process within two months of the complaint being lodged.

Deliberations during the early resolution process will remain confidential to the parties and the Case Resolution Officer. Details will not be passed on or be available to either a Compliance Officer or a Workplace Relations Commission Adjudicator.

Cases resolved through early resolution will be closed when an agreement, signed by both parties, is supplied to the Early Resolution Service. No further action will be taken by the WRC. Agreements arrived at will be binding on both parties and enforceable by the parties through the civil courts. Where the employee does not receive an amount of money due on foot of a binding agreement resulting from his or her employer’s insolvency, that employee will have access to the Insolvency Fund on the same basis as if the amount was due on foot of a hearing.

The Early Resolution Service (ERS) will be closely aligned with the Registrar’s function. It will carry out an initial assessment of the complaints from individual cases referred to it by the Registrar. It will then engage with the parties² to the dispute, to secure their willingness to participate on a voluntary basis in early resolution. A range of intervention tools will be used including email and telephone communication and, only in exceptional cases meeting directly with the parties. The primary aim will be to facilitate and record agreement. Where agreement is reached the case will be referred back to the Registrar for closure. Cases which cannot be resolved within the deadline will be referred back to the Registrar for progression to the next relevant stage for appropriate action.

Collective Conciliation Service

The CERS will also carry out the conciliation functions currently undertaken by the LRC. This is a long established service which enjoys the confidence of employers and employees. It is therefore not envisaged that the proposed new structures will alter how the statutory mediation and conciliation processes that deal with collective disputes under the remit of the Labour Relations Commission under the Industrial Relations Acts, 1946 to 2004, are delivered.

The CERS will continue to provide conciliation as a voluntary process involving a facilitated search for agreement between disputing parties where they have failed to resolve the issue themselves.

² Where parties are represented contact will be made through the representative nominated by the parties including trade unions and employer representative bodies.

3.4 Adjudication Service:

All first instance complaints requiring adjudication will be heard by Workplace Relations Commission Adjudicators. Where a case is referred for hearing it will be assigned by the Registration Service to a WRC Adjudicator and a date for hearing assigned. This Officer's role will be to hold a hearing where both parties are given the opportunity to be heard and to decide the matter. Parties will be free to represent themselves or choose their own representation.

Time limit for making complaints

A consistent time limit of six months for initiating all complaints requiring adjudication will be introduced together with consistent criteria under which in exceptional circumstances such time limit may be extended to twelve months.

Fee for making a complaint

The issue of whether a fee for making a complaint should be introduced is under consideration. The provision of workplace relations services has considerable cost implications for the state. It would seem logical that users of the service would be asked to contribute in some way towards the service. Any fee introduced would be a modest administration fee somewhere in the region of €50. It would be configured in such a way as to encourage early resolution. For example there may be no fee for Early Resolution with the fee only being charged when a case progresses to a hearing. In addition any fee would likely take into account the considerable additional cost incurred by the state associated with the processing of paper based complaint forms. Therefore the fee may only apply to paper based complaints with a lesser or no fee applying to complaints submitted and processed online.

Workplace Relations Commission Hearings

All WRC hearings will be conducted by a single person. The objective of the hearing will be to obtain a just, fair and efficient resolution of a dispute. This will be achieved by ensuring that the adjudication process is provided by independent, professional and impartial decision-makers. These Officers will be statutorily independent in their decision making duties as they relate to adjudicating on complaints presented to them.

Ensuring High Standards

Clear criteria will be established with regard to the knowledge, experience and skills of WRC Adjudicators who will in future be appointed through an open and transparent system. Induction and on-going training will be provided to all those appointed to this role, who will be subject to a Code of Conduct for Workplace Relations staff. In addition they will be subject to annual performance appraisal and the normal public sector performance management and development process will apply. This will require certain standards and targets to be met on an annual basis. (See Section 8 for further details on Appointments and Staff Code of Practice).

A detailed Operations Manual will be prepared to govern the conduct of hearings. This Operations Manual will be published on www.workplacerelations.ie so that those involved in Workplace Relations Commission hearings can know what to expect during a hearing. In addition, a Customer Charter will be published with specific commitments with regard to the quality and efficiency of the service that users can expect. These will be supported by service level targets to ensure quality, consistency and timeliness of hearings and determinations. These targets will be subject to annual review and publication.

Conduct of Hearings

To date there has been a significant inconsistency in how Workplace Relations adjudicating bodies operate in terms of the degree of formality observed at hearings, adherence to the rules of evidence and the extent to which adversarial modes of procedure are used.

A common standard of practice, compatible with the intended objective of providing a speedy, inexpensive and relatively informal means for dispute resolution will be adopted for WRC hearings.

While an appropriate level of independence and accountability of decision-makers will be provided for, parties have a right to have uniformity in interpretation of the law. In addition all hearings must comply with the principles of natural and constitutional justice. Therefore, while hearings of the WRC will not follow strict rules similar to courts of law, fair procedures should be followed.

Broad, simple but flexible guidelines and an appropriate management structure will be put in place. The aim will be to deliver a high standard in adjudication while ensuring that the statutory independence of WRC Adjudicators in their decision-making, regarding complaints presented to them for decision is not compromised.

The legislation will make provision for the Minister to make regulations to provide for certain matters in relation to the conduct of hearings. Subject to these regulations, WRC Adjudicators will have a level of discretion to determine their own procedures in the conduct of hearings.

Hearings of the Workplace Relations Commission will be held in private unless the WRC Adjudicator decides at the request of either party to the complaint to hear the complaint in public. Parties wishing their case to be heard in public will be required to submit their request for a hearing in public, and the reasons therefor, in writing and in advance of the hearing. Where such a request is received in writing and in advance the WRC Adjudicator shall consult the other party. Having considered the request and sought the views of the other party it shall be for the WRC Adjudicator to decide in advance whether all or part of a hearing is to be held in private or in public. Parties will be notified prior to the hearing of the decision as to whether all or any part of the hearing will be in public.

Decisions

Having conducted the hearing the WRC Adjudicator will issue a written, reasoned, signed and dated decision. A template will be provided for producing decisions. This template will require that the written decision outlines the reason for the decision and the law as it has been applied.

The template will require the written decision to include:

- The issues identified as being relevant to the claim
- An explanation as to why any of the above issues were not determined
- Findings of fact relevant to the issues which were determined
- A concise statement of the applicable law
- Details of how the applicable law was applied to the findings of fact
- The decision, including any award

The written reasoned decision will be communicated to both parties in writing, with details of the appeal and enforcement processes. The target timescale for communicating the written decision will be to issue 90% of decisions within 28 working days from the date of the hearing. Copies of all decisions will be published on the WRC website within 10 days of notification to the parties.

Either party to the adjudication may request anonymity in the published decision. Such a request, which must be accompanied by the reason why anonymity is sought, will be considered by the Workplace Relations Commission Adjudicator who will decide whether or not the request will be granted. Where anonymity is granted the decision will be published with the names and any identifying features concerned redacted.

In order to aid consistency in decision-making a database of decisions will be maintained and made available through www.workplacerelations.ie. Periodic reviews of decided cases will be undertaken by the Registrar. These will be categorised and made publicly available. This will be of benefit to those considering making a complaint or who have had a complaint made against them and to those providing information to employers and employees.

Appeal from a Workplace Relations Commission Hearing

Either party shall have the right to appeal the decision of a WRC hearing to the Labour Court. A consistent time limit of 42 days from the date the decision issues will be introduced.

The written decision from the WRC hearing will provide the basis for any appeal. A party who fails to attend (or be represented at) a WRC hearing, without reasonable cause, shall forfeit the right to appeal to the Labour Court.

The notice of appeal will require applicants to provide effective grounds of appeal. This will allow the Labour Court to examine whether a claim is sufficiently meritorious to proceed to an appeal hearing.

3.5 Compliance and Enforcement Service

Views were expressed in last autumn's consultation responses that inspections should continue to be carried out as heretofore and that any new structures cannot merely deal with complaints but must also continue to have a proactive inspection role.

Non-compliant employers cost the State, employees and other employers' money. It is important that a culture of compliance is established. In addition to providing information, an effective inspection and enforcement regime is essential in achieving this. The aim must be to gain compliance in the most efficient and effective manner. To further assist in achieving this a number of more proportionate and less costly enforcement mechanisms will be introduced. These will ensure that it will only be necessary to resort to costly and time consuming prosecutions in unresolved cases.

Role of Inspection

In order to promote compliance and deter employers from risking non-compliance a pro-active risk based programme of inspection will be delivered in addition to investigation of complaints.

Inspectors also play a key role in informing and educating employers with regard to complying with employment law. For this reason it is proposed to change their title to Compliance Officer to reflect this more holistic approach.

The main function of the Compliance and Enforcement Service will be to make adequate arrangements for the enforcement of employment law including by the inspection, examination and checking of workplaces and employment records, the carrying out of investigations and the monitoring of compliance with the requirements of employment law. While the compliance and enforcement service will be based on the current NERA Inspection Service this will be supplemented by a number of improved provisions that will deliver a more efficient and effective compliance system. These are set out in detail below.

Complaint/Appeal to the Labour Court

In addition to the existing enforcement mechanisms Compliance Officers will be empowered to bring a complaint to the Labour Court in certain instances. This will reduce the need to rely on expensive and time-consuming prosecution procedures for certain offences.

If the employer fails or refuses to rectify the non-compliance the Compliance Officer will issue a Compliance Notice setting out the steps the employer must take to effect compliance within (a further) 21 days. An employer may appeal against all or any aspect of the notice to the Labour Court within this 21 day period.

If, within this 21 day period, the employer does not appeal and fails or refuses to rectify or set out in writing how he or she proposes to rectify the matters set out in the notice, the Compliance Officer may make a complaint to the Labour Court. The Labour Court may hold a hearing where the employer and the Compliance Officer would be heard. The Court will be empowered to cancel, alter or confirm the Compliance Notice and make an order similar to the current provision of Section 32 (1) (b) 1946 Industrial Relations Act.

Such an order could direct the employer to do such things (including the payment of any sum due to a worker for remuneration in accordance with the legislation) as will, in the opinion of the Court, result in the law being complied with by the employer.

If the employer fails to implement the court order it will be enforceable in the District Court similar to the current provision in Section 32 (4) of the Industrial Relations Act 1946.

Fixed Charge Notices

There are a small number of areas where a fixed charge notice scheme could yield compliance in a more efficient and effective manner. Introduction of such a scheme would encourage compliance and reduce the need to rely on expensive and time consuming prosecution procedures for certain offences. These could include:

- Failing or refusing to provide an employee with written terms and conditions of employment as prescribed by law
- Failing or refusing to provide an employee with a payslip as prescribed by law
- Failing or refusing to record deductions on a payslip as prescribed by law
- Failing to maintain or produce employment records as prescribed by law

Where a Compliance Officer would detect suspected non-compliance in one or more of these areas they would serve a notice requiring the employer to rectify the matter within 14 days. If the employer rectified the matter the case would be closed. If the employer failed or refused to rectify the matter within the 14 day period the Compliance Officer would be empowered to serve the fixed charge notice. The charge would be set in the region of €150.

Such schemes are commonplace today and are a useful and efficient way of effecting compliance. If the person pays the charge the matter does not proceed to Court. However, if the person fails or refuses to pay the charge the matter can be progressed to the District Court where the defendant can defend their position in the normal way. Provision will also be made for the person in receipt of a fixed charge notice to appeal it to the District Court. In this regard fixed charges do not deny the person alleged to have committed the offence their right to a hearing.

Examples where fixed charge notices have been used to good effect include:

- Driving at a speed in excess of the Speed Limit
- Littering
- Taxi driver failing to give a customer a receipt for a taxi fare
- Parking illegally

Accepting Inspection Reports as evidence

Examining employers' records and checking detailed calculations can be time consuming and take up a considerable portion of an adjudication or hearing. For this reason, the report of an inspection carried out of an employer's records by a Compliance Officer will be admissible as evidence in hearings of the WRC or proceedings before the Labour Court. In this regard the Workplace Relations Commission Adjudicator or the Court will be empowered to request a copy of such reports where an inspection has been conducted or request an inspection be undertaken as the case may be. This will enhance the efficiency and effectiveness of WRC hearings and the Labour Court in dealing with certain cases.

Promoting Voluntary compliance

The aim and policy of the Compliance and Enforcement Service will be to seek voluntary compliance where breaches of employment law are detected. Compliance Officers will work with employers and allow them every reasonable opportunity to rectify breaches in preference to prosecution. The new measures to be introduced will be of assistance in achieving this.

It should ensure the number of prosecutions is kept to a minimum in line with the current low rate (of less than 2% of employers inspected). Notwithstanding this, it is essential that where employers deliberately and seriously or repeatedly flout the law and exploit their employees or refuse to cooperate with an inspection, the sanction of prosecution will continue to be available as a deterrent to non-compliance and to provide protection to employees and compliant employers.

3.6 Most appropriate intervention

Hearings

Some employment disputes can best, and indeed sometimes only, be resolved by an adjudication hearing where an independent third party hears both sides and makes a determination. This is particularly true where:

- The issues in dispute are particular to the personal circumstances of the individual making the complaint
- The facts surrounding certain events are disputed.
- Complex legal matters are at play
- Where the complainant is seeking compensation

In cases where facts are contested it is necessary for an independent third party to hear the evidence and legal argument of both parties and make a determination. Clearly in such cases a hearing is the most equitable and effective intervention.

Inspection

In other situations inspection will provide the most efficient and effective intervention. This is particularly the case where a complaint involves a statutory minimum entitlement that applies to all workers such as for example National Minimum Wage. In such cases the matter to be decided is whether or not the employee(s) received the minimum rate of pay. The most efficient and effective way to establish this is usually by inspection and examining records. In addition a single inspection may be able to rectify non-compliance for groups of staff or the entire workforce in certain employments. This is better than having numerous adjudication hearings dealing with exactly the same set of circumstances for different employees in the same employment.

Hearing or Inspection

An individual making a complaint is not necessarily best placed to know what the most effective redress mechanism is. While it is important that the State provides the most effective redress mechanism for users, the State also has a responsibility to provide the most cost effective mechanism. Accordingly, it is appropriate that the State, based on its knowledge and experience of the operation of the adjudication and inspection processes, should decide the most appropriate method of resolving disputes. Therefore, in general, the decision as to whether hearing or inspection is appropriate will be prescribed in legislation.

In some cases the Registrar³ of the WRC will be in a position to prescribe the most appropriate intervention. The Registrar will be empowered to include complaints which would normally go to inspection but which have a complaint related to the same set of circumstances with the same employer going forward to a hearing. For example, if a person claiming unfair dismissal also alleges they did not receive their statutory minimum rate of pay while in employment it may be most efficient for a hearing to deal with all issues in dispute.

In general, complainants will be directed either through legislation or the intervention of the Registrar (in the limited circumstances outlined above) to what the State believes is the most appropriate and efficient redress mechanism. The complainant or respondent employer will not have the right to object to the proposed/prescribed redress mechanism other than for certain trade disputes⁴.

However, it may not be possible to have a clear cut division between hearings and inspection in all cases. It may be necessary, in a small number of cases to provide for the complainant to choose whether to make a complaint to a Compliance Officer or seek a hearing. For example, in relation to most OWTA complaints it is proposed that Compliance Officers should be empowered to require employers to comply with statutory minimum provisions in the legislation such as holidays and public holidays.

However, given that Compliance Officers could merely require employers to provide an employee with that to which they are legally entitled and could not require an employer to pay compensation it may be necessary to provide that an employee can opt to make a complaint to seek compensation at a hearing. This may be necessary given that OWTA derives from an EU Directive. Further consideration of this matter is required before a definitive decision is reached.

There are over 100 complaints that can be made under a broad range of employment legislation either for hearing or inspection. Each of these has been examined, as part of the reform deliberations, to establish whether a hearing or inspection would provide the best form of redress. The result of this examination is set out in three tables in Appendix III. The tables set out summaries of the main first instance complaints together with details of where they currently are dealt with at first instance and a recommendation as to whether they should be subject to WRC hearing or Inspection.

Table 1 includes complaints proposed for hearing while Table 2 sets out complaints proposed for inspection.

³ See details of Registrar in Registrar Service Section 3.2 above

⁴ Workplace Relations Commission hearings will not investigate trade disputes where an objection is raised under Section 13 (3) (b) of the Industrial Relations Act 1969

Table 3 in Appendix III includes complaints which should in general be dealt with by inspection but where it may be necessary to provide that a complainant may seek compensation at a hearing rather than make a complaint to a Compliance Officer.

A more detailed breakdown of each type of complaint under the relevant legislative provisions is set out in the document *“Proposed Redress Mechanism under the New Compliance and Redress Model”* available in the Publications Section on www.workplacerelations.ie

These were arrived at taking account of:

- The need to avoid overlap and duplication
- The establishment of the two-tier model
- The need for both parties to be heard
- The individual nature of the entitlement/dispute
- Best use of resources
- Promotion of compliance

3.7 Workplace Relations Commission Corporate and Strategic Services

Corporate and Strategic Services (CSS) will be responsible for the provision of support at corporate and operational levels, and will be responsible for overall corporate governance and the central provision of services including:

- Joint Services Management for the Workplace Relations Commission and Labour Court
- Strategy and policy development and implementation
- Finance and Budgeting
- DJEI Liaison
- ICT Liaison
- HR Liaison
- WRC Communications
- Online presence for WRC and Labour Court including a joint website
- Training and staff development
- Facilities Management
- Procurement.

CSS will provide assurance to the Chief Executive of the WRC and the Chairman of the Labour Court in relation to compliance with all internal controls, laws, regulations and corporate governance requirements generally.

Workplace Relations Website

The interim website, www.workplacerelements.ie, published in January 2012, currently contains all information, legislation and forms for making an employment complaint or appeal. It will continue to be developed and will, in time, replace the websites of the five bodies. When the new two-tier structure is put in place this will be the single corporate and information website of the WRC and the Labour Court. CSS will be responsible for its management.

4. The Labour Court

Role and Composition of the Labour Court

The Labour Court (Court) will continue to deliver its existing services (other than some first instance complaints which will transfer to the WRC) in addition to taking on the additional appellate function in relation to the Workplace Relations Commission Adjudicators' decisions and a new role in relation to dealing with appeals and enforcement of Compliance Notices issued by Compliance Officers. The statutory mediation and conciliation remit of the Labour Court under the Industrial Relations Acts, 1946 to 2004 will not be altered by the new arrangements.

The Court will comprise the Chairman, Deputy Chairs and Ordinary Members. Future appointments will be made in a more transparent manner. Clear criteria will be established with regard to the qualifications, knowledge, experience and skills of appointees to ensure an appropriate balance of industrial relations, employment, legal and adjudicative skills and experience (further details are set out in the Section 8 Appointments and Staffing).

Legal services for the activities of the Court will continue to be provided through the Office of Registrar of the Labour Court.

Appeals of WRC Hearings

Either party subject to a WRC hearing shall have the right to appeal the decision. The Labour Court will hear all appeals that arise from WRC. A common period of 42 days for lodging appeals will apply across all legislation. Appeals will be *de novo* hearings held in public with the decisions published on www.workplacerelements.ie. The Labour Court will act as a court of final appeal for all adjudication decisions of the Workplace Relations Commission, subject to the right of either party to bring a further appeal from a determination of the Labour Court to the High Court on a point of law only.

The Labour Court will share many common features and facilities with the Workplace Relations Commission, including a common case management system with shared case numbering and identification elements which will make the administration of the appeals system more efficient.

Members of the Labour Court will have appropriate levels of access to the case management system to assist them in dealing with the appeal.

The notice of appeal will require applicants to provide specific grounds of appeal (See WRC Adjudication Service Section 3.4). This will allow the Labour Court to examine whether there are grounds on which the appeal can proceed to an appeal hearing.

Fee or Deposit for making an appeal

The issue of whether a fee or deposit (or both) for lodging an appeal should be introduced is under consideration. There is a cost to the State of providing an appeal service. It is important that such a service would be available where there is a genuine belief by one of the parties that the Workplace Relations Commission Adjudicator should have exercised his or her judgement differently and in a manner that would have delivered a different outcome to the case and not simply “to give the case another run”.

Any fee introduced would be an administration fee and would not represent the cost of providing the service. Any deposit, while not being prohibitive, would need to be meaningful and would be refunded to the applicant unless the Court found the appeal was without good cause. For example if the Court believed the appeal was unnecessary, improper, vexatious or misconceived they would be empowered to retain all or part of the deposit.

4.1 Changes in the Operating Structure of the Court

Volume of Appeals

Within the new arrangements there will be a far greater emphasis on achieving settlement of cases at the early stages through early resolution or by administrative arrangements. This should reduce the number of cases going forward for hearing and consequently for appeal. The system should also be geared at promoting better case management thus reducing the time needed for hearings at both first instance and appeal.

A preliminary analysis of the potential increase in cases presenting to the Labour Court as a result of the reform process indicates a possible 56% increase. It is proposed that changes in the operation and structure of the Court will lead to a more efficient and productive throughput of cases ensuring that a small expansion in the membership of the Court will deal with appeals in an efficient and effective manner.

Expansion of the Court

The Labour Court currently has three divisions. This will be increased to four divisions and an additional two deputy chairs will be appointed. This would put the membership of the Court at one Chairman four Deputy Chairmen and eight Ordinary Members. The additional cost of this increase will be greatly outweighed by major savings delivered by the reform process.

Having a Chairman and four Deputy Chairs will allow for chairs of divisions to be rotated in order to attend to drafting and related work. This will facilitate all four divisions to continue to sit in the absence of the Chairman or a Deputy Chair.

Operational Efficiencies

Provision will be made to allow the Chair and Deputy Chairs to sit alone in matters such as case management conferences, adjournment applications, examining the merits of certain appeals or similar routine applications thus freeing up the divisions to deal with contested cases. These changes will greatly enhance the efficiency and productivity of the court.

The position with regard to resourcing of the Court, charges and deposits will be kept under review in the light of number and type of cases submitted for appeal.

4.2 Dual Role of the Labour Court

In the consultation process and in the course of discussions with the various interested parties some concern was expressed at the appropriateness of assigning the appellate role in all employment rights case to the Labour Court. Those who expressed those reservations perceive difficulties in reconciling the Labour Court's functions as originally envisaged in the Industrial Relations Act, 1946, which confer upon it a voluntary role in endeavouring to promote harmonious relations in industry and securing settlements in industrial disputes, with a duty to act judicially in matters of employment rights.

The Labour Court has, however, been involved in handling different aspects of these two distinct jurisdictions for over forty years. The Labour Court was first vested with responsibility for adjudication on statutory legal rights under the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act, 1977. This type of jurisdiction is concerned, moreover, not only with statutory legal rights but with what the European Court of Justice has characterised as fundamental human rights. The Labour Court may refer questions as to the interpretation or validity of EU Law or Secondary Legislation to the European Court of Justice.⁵ In addition to its responsibility for dispute resolution under the Industrial Relations Acts 1946 -2004, the Labour Court has over the years acquired an adjudicative role under a wide variety of employment rights statutes. It currently has appellate jurisdiction under the following employment rights statutes: -

- The Organisation of Working Time Act 1997
- The Employment Equality Acts 1998 to 2011
- The National Minimum Wage Act 2000

⁵ A reference for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union.

- The Protection of Employees (Part-Time Work) Act 2001
- The Protection of Employees (Fixed-Term Work) Act 2003
- The Pensions Acts 1990 to 2008
- The Safety, Health and Welfare at Work Act 2005 (Section 29)
- The Employees (Provision of Information and Consultation) Act 2006
- The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2006
- The Health Act 2004 (Section 55M(11))
- The Employment Permits Act 2006
- European Communities (Organisation of Working Time) (Mobile Workers in Civil Aviation) Regulations 2006

Also the Protection of Employees (Temporary Agency Work) Bill, 2011 makes provision for an appeal to the Labour Court from a decision of a Rights Commissioner thereunder.

While cases involving employment rights matters currently account for approximately 30% of the Court's case load (measured in the number of cases referred) the Court has regularly reported that, due to the complexities involved, such cases represent approximately 50% of its workload.

Moreover, many of the functions of the Court that come within its general industrial relations remit involve the determination of legal rights and responsibilities and require the application of legal principles. These include cases under the Industrial Relations (Amendment) Act 2001, the Industrial Relations (Miscellaneous) Provisions Act 2004 and the adjudication of disputes concerning the contravention of Registered Employment Agreements.

Most of the statutes for which the Labour Court already has appellate jurisdiction are based on Directives of the European Union. Cases under these statutes regularly involve complex questions of National and European law. Over many years the Labour Court has demonstrated a capacity to interpret and apply this body of law in its decisions. The Court issues detailed and reasoned written decisions in which the legal issues arising are identified, analysed, discussed and applied to the facts of the case. This is evident from a perusal of the Court's decisions which are published on its website. A considerable body of jurisprudence in employment law has developed over recent years around the decisions of the Labour Court.

The decisions of the Labour Court in employment rights cases are appealable to the High Court only on a point of law⁶. Very few of the Court's decisions are appealed and fewer still are overturned on appeal. Generally the Superior Courts acknowledge the specific competence of the Labour Court in the sphere of employment law, accepting its expertise in matters for which it has statutory jurisdiction.

It is also noteworthy that the Labour Court generally works to a target of issuing decisions in employment rights within six weeks of the hearing. This target is met in over 80% of cases.

The possibility of having specialist divisions of the Court to deal with employment rights issues, with other divisions dealing with industrial relations issues, has been considered. Such an arrangement would have the potential to deliver undesirable inflexibility in ordering the work of the Court and could lead to inefficiency, rigidity and delay that would seriously impede the ordering of the Court's business and its efficiency.

Having considered all the issues there is no evidence to support the proposition that the Labour Court is impaired in dealing with employment rights matters by its concomitant remit in relation to industrial relations issues. Nor is there a need to establish separate divisions to deal with employment rights as distinct from industrial relations. It is important that all members and divisions of the Court should be available to undertake any work within the Court's jurisdiction. The allocation of work to members of the Court will continue to be a reserved function of the Chairman of the Court who can, where appropriate, assign members with particular experience or expertise to particular cases.

5. Enforcement of Awards

There was general agreement in the consultation responses that enforcement is becoming increasingly difficult and ineffective. It was identified that what is required is a faster, more robust, cheaper method of enforcement of determinations of employment rights bodies. There is less consensus on what the method of enforcement should be. While a number of different enforcement mechanisms were proposed, there was general agreement that all awards should be enforced through one body only and all procedures should be identical regardless of the nature of the award or the legislation under which the claim was taken.

A new and more effective method of enforcing awards will be developed.

⁶ The full original jurisdiction of the High Court can always be invoked - in proceedings such as *certiorari*, prohibition, *mandamus*, injunction or declaratory action – to ensure that the hearing and determination of the Labour Court will be in accordance with the law.

6. Appeals to the High Court on a Point of Law Only

Any determination of a hearing of the WRC will be capable of being appealed by either party to the Labour Court. A further appeal would lie to the High Court on a point of law only, from a determination of the Labour Court.

7. Governance of the Workplace Relations Commission and the Labour Court

A number of issues were considered in deciding the most appropriate governance arrangement that should apply to the new two-tier structure. These included:

- Government policy in relation to agency boards and having agency managers directly accountable to Ministers
- An appropriate level of executive oversight by the Minister and Department
- The appropriate level of independence from Ministerial influence in decision making required
- The level of independence from stakeholder influence in decision making required
- The level of independence for the adjudicative and appellate decisions required
- The need for stakeholder involvement in the design and delivery of services
- Practical considerations about the relative ease with which changes can be made
- Efficiency and practicality in terms of sharing services
- Value for money and optimal allocation and use of staff and other resources

It is important that the WRC and the Labour Court have sufficient levels of independence to operate impartially and, in its design, be seen to operate without undue influence from the Minister, the Department, individual employers, employees, those representing them or any other party. In addition it is essential to secure best value for money.

Having considered the options it has been decided to establish both bodies as Offices of the Department of Jobs, Enterprise and Innovation and to provide for a statutory Board for the WRC. This governance structure can best meet the criteria set out above. It provides a necessary buffer between the Minister and quasi-judicial decisions and operational matters while at the same time conferring an appropriate level of executive oversight with appropriate input from stakeholder interests.

The Labour Court has operated as an Office of the Department of Jobs, Enterprise and Innovation (and its predecessors) since its establishment. This enabled the Court to deliver independent decisions even in cases where the Government itself was subject to the decision.

The expanded Labour Court and the new Workplace Relations Commission will share common administrative features and facilities, including administrative, managerial and corporate support services and a common ICT system. It is also intended that DJEI will provide staff to both bodies.

It is important that these shared services are put in place in a manner that does not in any way compromise the independence of either body. Applying similar corporate governance structures to both bodies will greatly assist the management and delivery of these joint services. In addition the governance requirements of an office as proposed will require fewer resources. Therefore establishing both bodies as two separate and independent Offices of DJEI is the best way of making optimal use of managed and shared services available from DJEI.

Both the Labour Court and the WRC will be subject to the usual governance requirements of Government Offices and will be required to apply the highest standards of governance and accountability. Both bodies will make a report of their activities to the Minister each year which will be laid before each House of the Oireachtas. In addition both bodies will supply to the Minister such information as he or she may from time to time require regarding its activities.

While the Labour Court would continue to operate without a board it is proposed to establish a Board for the WRC.

WRC Board

Given the diverse range of services that will be provided by the WRC the organisation would benefit from the input, advice and oversight of a Board comprising stakeholder's representative of users of the service. To provide for this a Workplace Relations Commission Board will be established. This will be a statutory Board, appointed by the Minister. The Board will have important statutory functions in relation to the business plans, work programmes and service design and delivery including the preparation of statutory codes of practice of the WRC. It will be a tripartite board representative of employers, trade unions and appropriate Ministerial nominees. This will ensure that stakeholder interests will be properly represented at the appropriate level and that the services of the WRC have appropriate input from stakeholders in their design and delivery.

Appropriate safeguards will be put in place to ensure that the WRC Board will have no role or influence in relation to the quasi-judicial decisions of Adjudicators or in relation to how individual inspections or other cases are dealt with.

No remuneration will be paid to Board members. Travel and subsistence allowances will be paid in line with Government guidelines.

8. Appointments and Staffing

Recruitment/Assignment

Implementing this reform will involve a major programme of change for those working in the existing bodies. Staff have already shown a willingness to change and are committed to providing a better service. Management will work closely with staff and their representatives in the design and delivery of the reform programme. This will be done in the context of the Public Service or “Croke Park” Agreement which involves a commitment by public servants and their managers to work together to change the way in which the Public Service does its business with less staff and lower costs, while continuing to meet the need for services and improve the experience of service users.

The services of the Workplace Relations Commission and the Labour Court will be delivered by a combination of Civil Servants of the Department of Jobs, Enterprise and Innovation, officers appointed on contract (Labour Court Members) and people drawn from an external panel of adjudicators.

As is currently the case suitably experienced and trained civil servants recruited and assigned in the normal way, will provide the vast majority of the workplace relations services including the early resolution, conciliation and adjudication services.

The existing five bodies have a strong cohort of experienced, knowledgeable and dedicated staff. The new structures will draw on this very valuable resource. Given the streamlining of structures and processes, combined with the reduction in public sector numbers generally, there will be an overall reduction in the management and staff assigned to the new bodies.

On establishment of the Workplace Relations Commission, its Adjudicators will be drawn from the existing serving officers within the workplace relations services. The skills and experience of the Equality Mediation Officers and of the existing panel of Rights Commissioners will be utilised. This will provide a mixture of civil servants and external appointments with a broad range of experience and expertise.

As the reform will bring about significant change in how adjudications are undertaken and how decisions are delivered intensive training will be provided to all existing personnel engaged in this function and any newly appointed WRC Adjudicators.

In future appointments to the post of WRC Adjudicator will either be civil servants recruited/assigned in the normal way or from an external panel formed through an open and transparent system.

Workplace Relations Commission Adjudicators will be appointed for fixed periods by the Minister with the possibility of subsequent periods depending on participation in on-going training and development and satisfactory performance. This will require certain standards and targets to be met. This appraisal process will respect the independence of the decision making function of Adjudicators.

Future appointments to the posts of Chairman and Deputy Chair of the Labour Court will be through an open and transparent system in keeping with recognised best practice in public appointments. In order to keep the employer/employee balance in the tripartite divisions of the Court, Ordinary Members will be selected through a selection process based on merit from a panel of candidates put forward by representatives of employer representative groups and trade unions. The current arrangements will continue to apply in respect of existing Members.

The guiding principle for all appointments/assignments will be openness, transparency, ability and merit. Clear criteria will be established as regards knowledge, experience, qualifications and skills against which all candidates will be assessed.

Certain standards and targets will be required to be met by those appointed to decision-making posts. The appraisal process will respect the independence of the decision making function.

Performance Management and Professional Development

Structured, intensive, specialised training and regular refresher training will be provided, to ensure that all officers and those included on the panel of adjudicators have the necessary knowledge and skills to perform their functions to the highest standards.

All staff including all Workplace Relations Commission Adjudicators and Labour Court members will be subject to annual appraisal. The normal public sector performance management and development process will apply. This will require certain standards and targets to be met. As stated above this appraisal process will respect the independence of the decision making function of WRC Adjudicators and Labour Court Members.

Code of Conduct

A Code of Conduct will be drawn up to guide and govern the activities of all those providing Workplace Relations services. Contract Staff and those included on any panel, in addition to civil servants assigned to both bodies will be subject to the Code. The Code will be drawn up in consultation with the WRC Board and with the staff, management and members of both bodies and submitted to the Minister for approval.

The Code will set out the general principles that will guide and inform the provision services by both bodies. The purpose of the Code will be to:

- Assist in the provision of a professional and effective service
- Promote good practice and the highest standards of conduct and ethics
- Prevent the development or acceptance of unethical practices

Data Protection

Given the nature of the work of the WRC and the Labour Court , the information which both bodies will have access to will include data of a personal nature governed by the Data Protection Acts 1988 and 2003 which regulate the collection, processing, keeping, use and disclosure of personal data.

Personal data will only be accessed in connection with the purposes for which it has been provided, will only be used for official purposes and will be treated in confidence in accordance with the Data Protection Acts. Detailed procedures and strict protocols and security measures will be put in place to protect personal data in the possession of both bodies. Access to data will be restricted to personnel who need access to carry out their function. Personnel will be prohibited from accessing data without a direct business requirement. They will also be prohibited from discussing with or disclosing to any unauthorised third party, either internal or external, confidential personal information. Full training will be given to all Officers on the need to protect personal data.

Protocols will be put in place to ensure that staff of both bodies will have appropriate levels of access to information and records, including the customer relationship/case management system to allow them to deal with their particular responsibilities. This will avoid the risk of people accessing information that does not directly concern their function.

9. Joint Services

The new structure will comprise two statutorily independent bodies sharing one streamlined administrative system. Both will have separate functions in the adjudication of employment rights and industrial relations disputes. While the Workplace Relations Commission and the Labour Court will be statutorily independent of each other and entirely separate and independent in their decision-making they will share many common features and joint services.

Both bodies will participate in a joint services arrangement which will involve sharing the provision of support at corporate and operational levels and the central and shared provision of IT, financial, HR, training and staff development, Department liaison and other supports.

The hallmark of the new institutions will be value for money and maximum efficiency in line with current Government policy and fiscal constraints. Greater emphasis will be placed on consolidating operations and procedures in order to reduce costs. This will include a concentration of locations in which hearings will be held and a reduction of costs of venues and travel associated with hearing of cases. There will be greater sharing of venues by both bodies and, to the greatest extent possible, hearings will be held in public buildings in a limited number of regional centres which are accessible by public transport.

Provision of legal and strategic services will be separate functions located and controlled within each of the bodies.

These shared services will be managed by means of a memorandum of understanding (MOU) or service level agreement (SLA) taking into account the specific needs of both organisations. The drawing up, operation and on-going evaluation of the MOU/SLA will be overseen by a Board of Management made up of the Chief Executive of the Workplace Relations Commission, the Chairman of the Labour Court (or their nominees) and a Departmental official nominated by the Minister

This shared administrative system will provide assurance to the Chief Executive of the Workplace Relations Commission and the Chairman of the Labour Court in relation to compliance with all internal controls, laws, regulations and corporate governance requirements in relation to their operation as public bodies generally.

In addition to the sharing of administrative, managerial and corporate support services the two organisations will share a number of other specific services including:

- The Advisory and Information Service (AIS) of the WRC will provide information services on behalf of the Labour Court
- The Corporate and Strategic Services of the WRC will develop and maintain the joint online presence of the WRC and Labour Court

- Appeals will be lodged to the Labour Court through the Registration function of the WRC and assigned to the Labour Court for hearing.
- While the Registration function of the WRC will assist the Labour Court in receiving, acknowledging and notifying respondents of appeals, all matters relating to case management including composition of court divisions and assigning of cases to divisions or prioritising or scheduling cases for hearing will remain a matter for the Court.
- Members of the Labour Court will have appropriate levels of access to the shared case management system to assist them in dealing with appeals

A comprehensive Customer Relationship Management/Case Management ICT system will be developed to support the future processes of the workplace Relations Commission and Labour Court.

10. The Legislative Programme

The Government, in a Decision of November 15th 2011, decided to reform the State's Employment Rights and Industrial Relations bodies. Work has commenced on the legislative programme and detailed design, to deliver the structures and processes necessary to achieve this reform.

The Minister will shortly seek a further Government decision for:

- The priority drafting of the **WORKPLACE RELATIONS (LAW REFORM) BILL 2012** for enactment by autumn 2012
- The draft Scheme of Bill, when approved, to be made available to the Oireachtas Joint Committee on Jobs, Social Protection and Education and to stakeholders and the public for consideration, while drafting of the Bill proceeds.

The Bill will provide, on the lines set out in this Blueprint, for the establishment of a statutory Workplace Relations Commission with a full range of functions formerly carried out by NERA, the Equality Tribunal, the LRC and the EAT (first instance functions). It will also provide for the Labour Court to be the appellate body to determine appeals against decisions of Workplace Relations Commission Adjudicators.

In addition, the Bill will provide for the orderly winding down of NERA, the Equality Tribunal, the EAT, the LRC and the transfer of redundancy appeals to social welfare appeals officers (subject to transitional provisions to complete business on hand on coming into operation of Act).

11. Consultation and Feedback

There has been a considerable amount of consultation on this process to date and a large volume of written material on the matter exists including reports, academic papers, proceedings of conferences and submissions made to the Department. The consultation exercise undertaken by the Minister last autumn was of particular assistance with many very helpful observations and suggestions put forward. Many of these are reflected in this document.

The purpose of publishing this Blueprint is to set out in more detail the structures and processes that the Minister intends to legislate for and establish by the end of this year. While further feedback and suggestions are invited from interested parties, it is not intended to cover old ground, rather what would be welcome are any observations or suggestions that might contribute in a positive way to the detailed design of the new two-tier structure and that might assist in ensuring that what is delivered is truly world-class and serves future generations well.

This document together with any observations received will inform the drafting of the Workplace Relations Bill which will give effect to the reform.

Views are requested by the 30th of April 2012

Submissions may be sent:

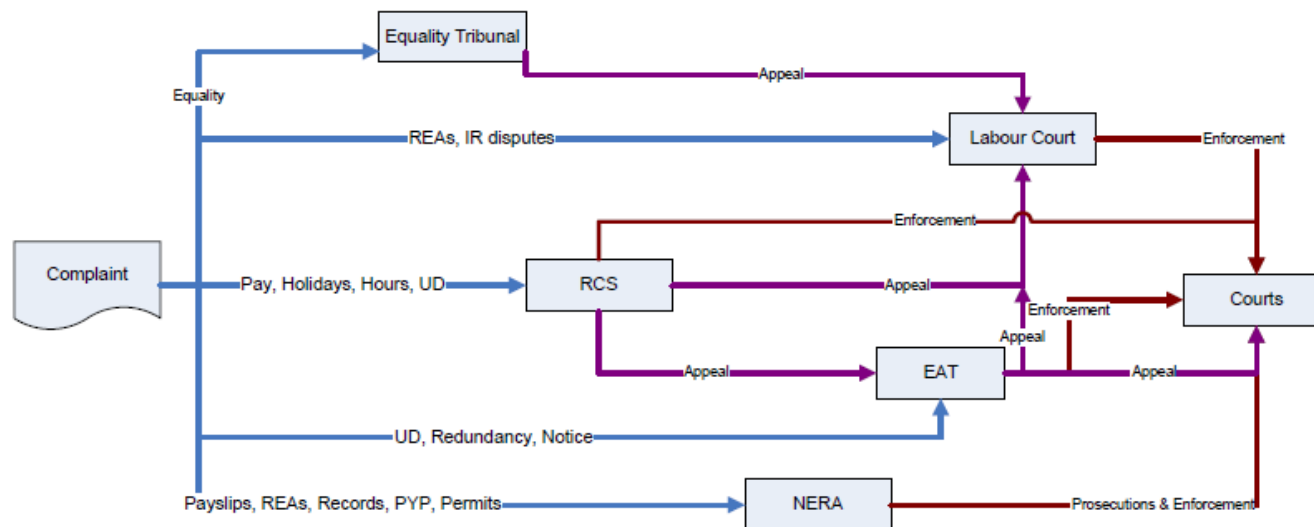
by email to: WRProjectOffice@djei.ie

by post to: **Mr Jason Kiernan,
Room 315
Department of Jobs, Enterprise and Innovation,
Davitt House,
65a Adelaide Road,
Dublin**

It is proposed to publish all responses on www.workplacerelations.ie after the closing date for receipt of submission.

Appendix 1

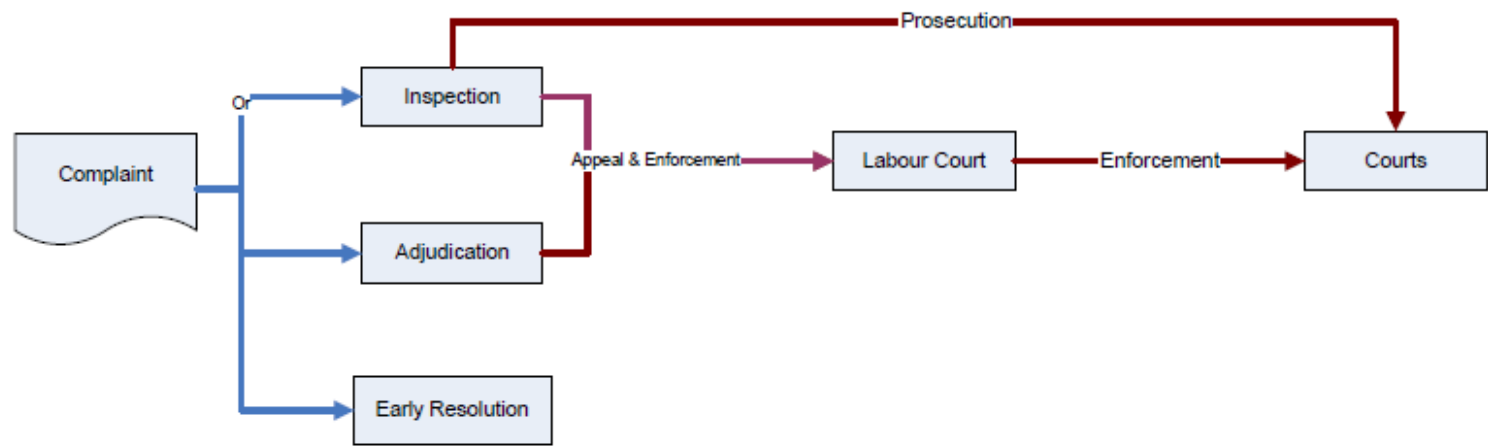
Existing ERIR Compliance & Redress Model



The current compliance and redress system provides that individual complaints of first instance arising from the same set of circumstances, in the same workplace, involving the same parties can be referred to any one of five bodies and may in fact be referred to two or even three Employment Rights Bodies at the same time. In addition a party wishing to appeal a determination may be forced to appeal the outcome of a single hearing to two different bodies.

Appendix 2

Proposed ERIR Compliance & Redress Model



The proposed new compliance and redress model will see all individual first instance complaints either referred for adjudication or inspection and all appeals referred to the Labour Court.

Note: Complaints that are not resolved at early resolution will, in the normal course, proceed to adjudication or inspection

Appendix 3

The table below recommends whether a complaint should be subject to WRC Adjudication or Inspection. Table 1 includes complaints recommended for adjudication while Table 2 sets out complaints recommended for inspection and Table 3 includes complaints which should in general be dealt with by inspection but where it may be necessary to provide that a complainant may seek compensation from a Workplace Relations Commission Adjudicator rather than make a complaint to an inspector.

Table 1: Complaints to be dealt with by WRC Adjudication Service

Issue/Legislation	Current	Proposed
Pay – 1 Potential Complaint		
Sunday Premium (OWT)	Rights Commissioner	Workplace Relations Commission Hearing
Wages not paid or paid less than amount due		
Hours of Work – 1 Potential Complaint		
Availability for Work	Rights Commissioner	Workplace Relations Commission Hearing
Unfair Dismissal – 6 Potential Complaints		
Unfair Dismissal	Rights Commissioner or EAT	Workplace Relations Commission Hearing
Industrial Relations Acts – 7+ Potential Complaints		
A broad range of complaints can be taken under the IR Acts	Rights Commissioners Labour Court	Workplace Relations Commission Hearing Labour Court
Collective bargaining with trade union rep (IR(Miscellaneous Provisions) Act 2004)	Rights Commissioners	Workplace Relations Commission Hearing
Discrimination/Equality – 4 potential Complaints		
Discrimination	Equality tribunal	Workplace Relations Commission Hearing
Equal Pay	Equality tribunal	
Occupational Pension	Equality tribunal	

Issue/Legislation	Current	Proposed
Penalisation/Whistle blowing – 24 Potential Complaints		
There are 24 pieces of legislation under which a penalisation/whistle blowing complaint can be made	Complaint can be made to Rights Commissioner in all 24 cases and in more than half of those cases a complaint can also be made to the EAT if unfair dismissal is alleged	Workplace Relations Commission Hearing
Redundancy – 5 Potential Complaints		
Did not receive redundancy	EAT	Department of Social Protection or where complex employment rights issues are involved Workplace Relations Commission Hearing
Did not receive correct redundancy	EAT	
No proof of employers inability to pay	EAT	
Collective Redundancy /Representative not properly consulted	Rights Commissioner	Workplace Relations Commission Hearing
Collective Redundancy /Representative not given information	Rights Commissioner	
Notice – 3 Potential Complaints		
Employee did not receive notice	EAT	Workplace Relations Commission Hearing
Employer did not receive notice	EAT	
Employee did not receive rights during notice	EAT	
Transfer of Undertaking – 3 Potential Complaints		

Issue/Legislation	Current	Proposed
Rights did not Transfer	Rights Commissioner	Workplace Relations Commission Hearing
Dismissed because of a transfer	Rights Commissioner	
No information or consultation	Rights Commissioner	
Fixed Term and Part Time Work – 6 Potential Complaints		
Part time treated less favourably	Rights Commissioner	Workplace Relations Commission Hearing
Fixed term treated less favourably	Rights Commissioner	
No objective grounds for renewing fixed term contract	Rights Commissioner	
Successive fixed term contracts	Rights Commissioner	
Failure to inform of permanent post	Rights Commissioner	
Failure to provide information	Rights Commissioner	
Employee Involvement Information and Consultation 3 Potential Complaints		
Provision of Information	Labour Court	Workplace Relations Commission Hearing
Election or appointment of employee representatives	Labour Court	Workplace Relations Commission Hearing
Disclosure of confidential information	Labour Court	Workplace Relations Commission Hearing
Parental, Carers, Maternity and Adoptive leave – 17 Potential Complaints		

Issue/Legislation	Current	Proposed
Not granted adoptive leave/additional adoptive leave	Rights Commissioner	Workplace Relations Commission Hearing
Carers leave	Rights Commissioner	
Parental leave	Rights Commissioner	
Force majeure leave	Rights Commissioner	
Not allowed to return to work following parental/adoptive leave	Rights Commissioner	
Maternity leave	Rights Commissioner	
Employer unwilling to sign confirmation documents	Rights Commissioner	
Medical/feeding breaks	Rights Commissioner	
Father of a child whose mother died not given leave	Rights Commissioner	
Health & Safety leave	Rights Commissioner	

Table 2: Complaints to be dealt with by WRC Inspection (Compliance Officer)

Issue/Legislation	Current	Proposed
Pay - 9 Potential Complaints		
Underpayment of National Minimum Wage	Rights Commissioner & Inspector	
REA	Labour Court & Inspector	

Issue/Legislation	Current	Proposed
ERO	Inspector (under 1946 Legislation) ⁷	Compliance Officer
No payslip given	Inspector	
Deductions not shown on payslip	Inspector	
Unlawful Deduction	Rights Commissioner	
Illegal method of payment	Inspector	
Not Keeping Employment Records	Inspector	
Terms of Employment Information Act – 6 potential Complaints		
No Statement or update of T&C	Rights Commissioner	Compliance Officer
Protection of Young Persons – 5 Potential Complaints		
Unlawful Employment of a Child/young person	Inspector	Compliance Officer
Rest breaks not given to a child	Inspector	
Double employment of a child	Inspector	
Employment Permits – 3 Potential Complaints		
Working without a valid permit	Inspector	Compliance Officer
Employing someone without a valid permit	Inspector	

⁷ EROs were enforced by the Inspectorate from 1946 until 2011 when they were found to be unconstitutional. The Industrial Relations (Amendment) Bill 2010 provides for the enforcement of EROs to transfer to the Rights Commissioner Service

Table 3: Complaints which should in general be dealt with by inspection but where an adjudication option may also be necessary

Hours of Work & Holiday Entitlements–OWT Act 14 Potential Complaints		
Rest Breaks	Rights Commissioner	Compliance Officer or Workplace Relations Commission Hearing where unfair dismissal or complex redundancy involved or where complainant is seeking compensation
Max hours	Rights Commissioner	
Annual Holidays	Rights Commissioner + EAT where redundancy is involved	
Public Holidays	Rights Commissioner + EAT where redundancy is involved	
Notification of starting & finishing times/additional hours	Rights Commissioner	