

## **Reform of the State's Employment Rights and Industrial Relations Structures and Procedures**

### ***A Submission by the Citizens Information Board***

#### **Introduction**

The Citizens Information Board (CIB) welcomes the Blueprint Document on the Workplace Relations Service. Indeed, the Board notes that many of the points raised in its previous submission are reflected in the proposed new structures. The establishment of two statutorily independent bodies to replace the current five is welcome. The role of the Workplace Relations Commission (WRC) in taking on the functions of the Labour Relations Commission, the National Employment Rights Authority, the Equality Tribunal, the Rights Commissioner Services and the first instance functions of the Employment Appeals Tribunal (EAT) should make it easier for both employees and employers seeking redress. The Labour Court as the single appeal body for all workplace relations appeals, including those currently heard by the EAT, should also facilitate easier access. A key challenge remains, however, as to how to ensure that all employees have sufficient support to enable them to use the new mechanisms to enforce their rights. A major difficulty with the existing structures is the gap between the entitlements and rights set out in employment protection legislation and workers being able to enforce these rights in practice.<sup>1</sup> While the emphasis in the Blueprint document on encouraging compliance is a very important one, such an approach requires the active co-operation of employers which may not always be forthcoming. It is also noted that the role of the Health and Safety Authority in monitoring the Safety, Health and Welfare at Work legislation does not appear to be incorporated into the revised integrated structures.

The CIB assists and supports people in identifying their needs and options and in accessing their entitlements to social services. This role is carried out primarily through its four delivery partners.<sup>2</sup> An important part of this support is advising, supporting and sometimes representing clients in taking cases to the Rights Commissioner Service and to the Employment Appeals Tribunal and/or negotiating with an employer on a client's behalf. The CIB website, [www.citizensinformation.ie](http://www.citizensinformation.ie) and its related microsites, *losingyourjob.ie* and *selfemployedsupports.ie* are important sources of information for both employees and employers. CISs and CIPS dealt with one million queries on all aspects of social service provision and citizens' rights in 2011. There were 99,073 employment-related queries to CISs (9% of total). Employment rights

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<sup>1</sup> [http://www.citizensinformationboard.ie/downloads/Emp\\_rights\\_aug\\_06.pdf](http://www.citizensinformationboard.ie/downloads/Emp_rights_aug_06.pdf)

<sup>2</sup> Citizens Information Services (CISs) (of which there are 42 nationwide), the Citizens Information Phone Service (CIPS), the Money Advice and Budgeting Service (MABS) (there are 51 MABS companies) and the National Advocacy Service (NAS).

and conditions accounted for almost half of the employment-related queries followed by unemployment and redundancy (22%). As stated in our previous submission, queries on employment rights to CISs and CIPS indicate that people who seek information and advice in relation to employment protection matters experience substantial difficulties in seeking to assert their employment rights, particularly in terms of identifying the appropriate redress pathway and negotiating their way through it.

It remains the case that, despite enhanced information provision mechanisms in recent years, a recurring theme across all of the employment rights issues identified by CISs and CIPS is an absence of clear information about entitlements and rights. Some workers rely on their employers for their information and the latter may not always have the right information. Great care is, therefore, required to ensure that access to clear information is an integral part of the new structures. In this regard, CISs have an important role in providing face-to-face information and advice and this role should be highlighted by the WRC.

The availability of a single complaint form to replace a plethora of forms is very welcome. However, the fact that this single complaint form can only be completed online and is complicated with numerous drop-down menus may present serious difficulties for some people.

### **Comments on Specific Aspects of the New Structure *Advisory and Information Service (3.1)***

#### Resolving Disputes at Workplace Level

The online tool to assist employers fulfil their obligations under the law is welcome as is the assistance available to employers to develop other policies and procedures. It is also very important that employees have the support and assistance they require to file complaints and negotiate their way through the redress protocols. The potential role of CISs in providing advice and assistance to both employees and employers should be emphasised. This is particularly important for people who are unable to self-negotiate because of literacy, computer, or language difficulties.

The previous CIB submission referred to the need to promote an ethos of compliance, especially among smaller employers where the compliance deficit is likely to be most pronounced. However, it is not clear what the proposed revision of S.I. No. 146 2000 (under the Industrial Relations Act 1990) for small owner managed businesses entails and/or how such revision will improve compliance among such businesses.

While there is merit in encouraging employees to seek to resolve complaints directly with their employer, care must be taken not to put too much responsibility on an employee to resolve a dispute where an employer is unwilling to engage in meaningful negotiation and adopts a 'take it or leave it' stance. A key question is how employers can be encouraged to deal fully with legitimate complaints and to resolve the issue locally.

### ***Registration Service (3.2)***

#### Complaints Management

A question arises as to what supports will be available for employees who have their complaints rejected because, for example, the claim is not made under the appropriate legislation or is out of time. In such instances, it may be appropriate to refer people to their local Citizens Information Centre for assistance in establishing exceptional circumstances and/or reasonable cause for a delay and in re-submitting complaints accordingly.

### ***Conciliation & Early Resolution Service (3.3)***

It is noted that participation is voluntary and there does not appear to be any clear incentive to employers to use this service. A question arises as to whether it should be mandatory for both employers and employees to use this service except in exceptional circumstances or in particular cases where it may not be appropriate, e.g., sexual harassment, bullying.

While agreements arrived at by using Early Resolution Service will be enforceable through the Civil Courts, it is not clear what support, if any, will be available to the employee from the WRC to enforce these agreements. Previously, there was an enforcement section in the EAT that provided such support to employees.

The fact that resolution is to be attempted by using email and telephone communication and that only in exceptional circumstances will there be meetings directly with the parties involved is a cause for some concern. Such an approach may not be conducive to early resolution or efficiency.

### ***Adjudication Service (3.4)***

#### Time Limit for making complaints

Currently, under the Redundancy Payments Act there is a period of 12 months for a person to file a complaint to the EAT and this can be extended by the EAT to 24 months if the complainant can show the delay occurred through *reasonable cause*. In the Organisation of Working Time Act 1997, a complainant has six months to bring complaint or 12 months if s/he can show *reasonable cause* (complaints regarding non-payment of annual leave and public holidays come under this Act). Under the proposed changes, the term 'reasonable cause' is being replaced by 'exceptional circumstances' and a time limit of six months for initiating all complaints is being introduced. This in effect means a reduction in the time period for initiating complaints under the Redundancy Payments Act and stricter criteria for extensions to the time limit.

#### Fee for making complaint

The implication that complainants who submit paper forms would have to pay a fee and that those whose complaints are submitted and processed online would pay a lesser or no fee assumes that computer literacy is universal. There are questions here that need to be addressed relating to not only people with little or no computer literacy but also to people with general literacy or language difficulties and those with intellectual disabilities.

### Conduct of Hearings

There needs to be clear criteria available for the WRC Adjudicator regarding the decision to hold or not to hold the hearing in public. A question also arises as to whether such decisions are open to appeal or review.

### Decisions

It is not clear on what basis the WRC Adjudicator would agree to anonymity in published decisions and whether or not one party (e.g. employee) can appeal this decision where only one party (e.g., employer) has been granted anonymity. This is an important consideration given that anonymity will not serve as a deterrent to non-compliant employers.

### Appeal from a Workplace Relations Commission Hearing

It is noted that *reasonable cause* for a failure to attend or be represented at a hearing is acceptable as a valid reason for not having to forfeit the right to appeal the outcome of a WRC hearing. There is a strong case to be made for the non-forfeiture only to apply in *exceptional circumstances*. Anecdotal evidence indicates that generally it is employers rather than employees who do not attend hearings and the *reasonable cause* clause may contribute to delays and backlogs in the system.

## **Compliance and Enforcement Service (3.5)**

### Complaint/ Appeal to the Labour Court

The procedures for enforcing compliance, as set out, appear somewhat cumbersome and would place a high level of responsibility on employees to initiate the procedures for enforcement. In particular, the protocols for referral by the Compliance Officer of complaints to the Labour Court, hearings by the Labour Court and enforcement in the District Court similar to the current provision in Section 32(4) of the Industrial Relations Act 1946) may be difficult for some workers to comprehend. A question arises as to why a complaint that has been adjudicated on and not appealed has to go to the Labour Court for enforcement rather than being referred directly to the courts with the support of an enforcement section. Also, it is not at all clear what the implications are for employers of non-compliance and it is unlikely that the proposed fixed charge notice scheme (with a €150 charge) would enhance compliance. Indeed, it may be the case that a fixed charge notice may be regarded by some employers as cheaper than full compliance and, therefore, have little deterrent effect.

The examples given where fixed charged notices have been used to good effect (parking, driving and litter offences) do not equate with failure by employers to provide an employee with payslips, terms and conditions of employment or maintain employment records – the latter would appear to be of quite a different order of importance.

## **Most Appropriate Intervention (3.6)**

### Inspection

It is accepted that an inspection can be an effective intervention in many instances, e.g., discovering what rates are paid and whether there is compliance with the National Minimum Wage. However, the fact is that a

hearing will still be necessary in many instances as the Compliance Officer cannot require an employer to pay compensation/arrears to an employee arising out of underpayment of National Minimum Wage, Registered Employment Agreements (REA) or Employment Regulation Orders (EROs).

### ***Enforcement of Awards (Section 5)***

There is no elaboration in the Blueprint Document on the whole area of enforcement of determinations of employment rights bodies.

A fundamental question is whether the WRC and Labour Court will have an enforcement section that supports complainants to pursue awards. In its previous submission, the CIB called for the establishment of a Specialist Enforcement of Awards Unit to assist employees, especially those of modest means, to follow through on awards granted by redress bodies.

### ***Governance of the Workplace Relations Commission and the Labour Court (Section 7)***

#### **WRC Board**

It would be good practice to have representation on the Board by independent information, advice and advocacy services who are at the forefront of engagement with workers whose employment rights are infringed.

### ***Appointments and Staffing (Section 8)***

It is important that compliance officers have relevant skills and professional qualifications in mediation and dispute resolution.

### ***Joint Services (Section 9)***

The Blueprint document refers to a 'concentration of locations'. In this regard, it will be important that hearings be accessible to all workers, including those living in remote rural areas.

### ***Collaboration between the Workplace Relations Commission and the Citizens Information Board***

The CIB has liaised with the Department and with NERA over the years and would be very happy to continue to work with the Workplace Relations Commission in the following areas:

- (i) Maximising the information, advice and advocacy role of CISs and CIPS in respect of employment rights and ensuring efficient referral pathways to the relevant agencies
- (ii) Integrating information production at a national level to ensure that there is no unnecessary duplication of publications and that there are fully effective website linkages
- (iii) Ensuring that all employers are fully informed about employment protection legislation and their responsibilities accordingly

- (iv) Highlighting areas where there is an ongoing issue of lack of compliance
- (v) Targeting smaller employers through their representative organisations - the Small Firms Association (SFA) and the Irish Small and Medium Enterprises Association (ISME) to ensure that they are fully informed on all employment rights legislation
- (vi) Exploring how the CIB website [www.citizensinformation.ie](http://www.citizensinformation.ie) and related micro-sites can play an enhanced role in developing a fully integrated information system to complement the new structures.