

**Bills Committee on
Employees Compensation Assistance (Amendment) Bill 2002**

The Administration's Response — Relief Payment

Introduction

This paper provides information requested by members of the Bills Committee at the meeting held on 3 April 2002 on the following aspects –

- (a) the amount of common law damages (including interest) awarded by the court and assisted by the Employees Compensation Assistance Fund Board (the Board);
- (b) persons who would be eligible for relief payment and the order of priority of such persons in receiving relief payment; and
- (c) deliberations of the Labour Advisory Board (LAB) on the proposal of relief payment.

(A) Amount of common law damages awarded by the court and assisted by the Board

2. Since the inception of the Employees Compensation Assistance Scheme (the Scheme) in July 1991, the Board has assisted 204 injured employees. Among them, 103 (or 50.5%) injured employees (or their family members) received assistance for common law damages under section 16 of the Employees Compensation Assistance Ordinance (ECAO). Section 16 of the ECAO provides for the payment of assistance to persons who are unable to recover compensation or damages from an uninsured employer.

3. The total amounts of assistance in respect of damages and related interests paid to these eligible applicants were \$142.8 million and \$22 million respectively. The average amount of damages assisted per case was \$1.4 million.

4. The distribution of amounts of assistance paid by the Board in respect of common law damages, exclusive of interests, is provided below:

Amount of assistance paid	No. of cases	Percentage Share
\$0.5 million or Below	41	39.8%
Over \$0.5 million to \$1 million	21	20.4%
Over \$1 million to \$1.5 million	16	15.5%
Over \$1.5 million to \$2 million	9	8.7%
Over \$2 million to \$3 million	10	9.7%
Over \$3 million to \$7 million	3	2.9%
Over \$10 million	3	2.9%
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Total	103	100%

(B) Persons eligible for relief payment and order of priority of such persons in receiving relief payment

5. In order to reduce the financial volatility brought about by the common law awards and at the same time provide reasonable assistance to injured employees, it is proposed in the Amendment Bill that a relief payment should be payable under the Scheme in lieu of common law damages.

Non-fatal Work Injury

6. In a non-fatal work injury, the relief payment shall be payable to the injured employee who is unable to recover from his employer payment of the damages for which the employer is liable to pay to him/her as ordered by the Court.

7. If the injured employee dies after he has been awarded damages but before the outstanding balance of relief payment has been exhausted, the relief payment shall continue to be payable to his/her surviving spouse or cohabitee and surviving child(ren) under the age of 21 at the time of the death of the injured employee.

Where two or more persons are entitled to receive the relief payment after the death of the injured employee, the payment shall be apportioned to them on equal shares.

8. Where the injured employee is not survived by a spouse/cohabitee and any child under the age of 21, then the relief payment shall be payable to the surviving parents on equal shares.

Fatal Work Injury

9. For a fatal work injury, the relief payment shall be payable to those eligible family members of the deceased employee who have been awarded damages by the court but are unable to recover payment of the damages from the employer. Such eligible family members would include the person who has any of the following relationship with the deceased employee, whether by blood or an adoption made before the date of the accident :

- (a) a spouse or cohabitee;
- (b) a child;
- (c) a parent or grandparent; or
- (d) a grandson, granddaughter, stepfather, stepmother, stepson, stepdaughter, son-in-law, daughter-in-law, brother, sister, half-brother, half-sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, and child of a brother or sister of the whole blood.

10. Where two or more family members are entitled to the relief payment, the amount shall be apportioned in the following manner:

- (a) on a pro-rata basis in accordance with the respective amounts of damages awarded to the eligible family members by the court;
or
- (b) on an equal share basis if the court has not apportioned the damages among the eligible family members.

(C) Deliberations of the LAB on the proposal of relief payment

11. The LAB held several meetings to discuss the proposal to reform the Scheme with a view to restoring its financial viability in the long run. Members recognised that in order to resolve the financial predicament faced by the Scheme without the need of increasing the levy rate drastically, the scope of the protection

under the Scheme has to be re-defined, particularly on the assistance in respect of common law damages which drained the resources of the Scheme.

12. In deliberating the reform measures, LAB Members agreed that the Scheme should no longer assume the liabilities of employers in paying common law damages due to the negligence of or breach of duty by such employers. However, in recognising the hardship of injured employees, it was considered that the Scheme should provide assistance in the form of a payment that is ex-gratia in nature to injured employees or their families who have been awarded such damages by the Court. In the Employees Compensation Assistance (Amendment) Bill 2002, such payment is given the name of “relief payment”.

13. In formulating the proposal of relief payment, members of the LAB had considered the following:

- (a) The proposed relief payment payable in the form of an initial lump sum payment plus monthly payments should be able to improve the cash flow problem of the Scheme without the need to increase the levy rate drastically. On the other hand, the proposal could accord reasonable protection to injured employees and provide them with long-term support;
- (b) Having considered the distribution of amounts of the assistance paid by the Board in respect of common law damages since its inception, Members reached a consensus that the limit of the initial lump sum payment should be set at \$1.5 million. With this amount, injured employees whose award of damages not exceeding \$1.5 million would be able to receive the assistance in one lump sum. The highest amount of compensation payable under the Employees’ Compensation Ordinance and the amount of the initial lump sum payment might reach a maximum of more than \$4 million;
- (c) As for the rate of monthly payment, Members considered that it should be set at a level comparable to the earnings of the injured employees before the accident so that it could provide reasonable support to the employees and their families. With this understanding, it was proposed that the rate of monthly payment should be set at \$10,000 (which was equivalent to the median monthly earnings of employees), or the actual earnings

of the employee before the accident, whichever was the higher;
and

- (d) In fatal work injury or in the case where the injured employee passed away before receiving his/her entitlements in full, the relief payment should be payable to the immediate family members.

14. After prolonged discussion, members of the LAB reached consensus on the details of the relief payment as follows:

- (a) Relief payment would be payable to those injured employees who have been awarded damages by the court;
- (b) The amount of relief payment shall not exceed the sum of damages as awarded by the court;
- (c) Where the amount does not exceed \$1.5 million, the relief payment shall be made in a lump sum. If it exceeds \$1.5 million, an initial payment of \$1.5 million shall be paid and then followed by monthly payments calculated at the rate of \$10,000 or the earnings of the employee at the time of the accident, whichever is the higher; and
- (d) The relief payment shall be paid to the injured employee in a non-fatal case. For fatal case or in case the injured employee has passed away before his/her entitlement of relief payment is fully paid, the relief payment shall be paid to his / her spouse and children under the age of 21.