



# Central employees' compensation system in selected places

IN12/17-18

## 1. Introduction

1.1 Employees' compensation, as defined by the International Labour Organization ("ILO"), is a form of insurance providing cash benefits, medical care and vocational rehabilitation to workers who are injured on the job or develop occupational diseases, as well as offering survivors' benefits to families of victims of occupational fatalities.<sup>1</sup>

1.2 ILO conducted a study in 2015 and surveyed a total of 169 places around the world, including Hong Kong, with a statutory employees' compensation system in place to protect employees.<sup>2</sup> Among them, 138 or 82% adopted the system of placing the obligation of taking out employees' compensation insurance solely on employers without requiring any contribution from employees.<sup>3</sup> Furthermore, "central compensation" constitutes the mainstream of employees' compensation insurance schemes, with 72% of the places surveyed opting for the government to establish and administer the insurance scheme. Other surveyed places like Hong Kong, instead, require employers to obtain cover from the private insurance market.

1.3 In Hong Kong, there have been discussions about setting up a central employees' compensation system amid the concerns over the adequacy of employees' protection provided under the existing private insurance market. According to the Government, no drastic changes should be made as the "cost effectiveness of a central employees' compensation fund is yet to be known".<sup>4</sup> Furthermore, the shift to a central fund "may cause serious impacts on all

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<sup>1</sup> See International Labour Organization (2013b).

<sup>2</sup> See International Labour Organization (2017).

<sup>3</sup> In the survey, there were also schemes with joint contribution from employers and employees (28 places), sole contribution from employees (1 place), or financing wholly by the government (2 places).

<sup>4</sup> See GovHK (2012).

insurance companies and their staff engaged in general insurance business"<sup>5</sup> as employees' compensation accounts for a large proportion of general insurance business.

1.4 At the request of Hon LEUNG Yiu-chung, the Research Office has prepared this information note which studies the central employees' compensation systems in Queensland of Australia and Japan. Queensland is selected for the study in view of the comprehensiveness of its central employees' compensation system and the success of its measures to assist injured workers in returning to work. Meanwhile, Japan's central employees' compensation system is one of the oldest in the world. More importantly, the Japanese government has set up 39 hospitals specialized in treating injured workers with the provision of holistic services ranging from medical assessment and care to rehabilitation. This information note will begin with an overview of the employees' compensation system in Hong Kong, followed by a discussion of the salient features of the central employees' compensation systems in Queensland and Japan.<sup>6</sup> The operation details of the employees' compensation systems in Hong Kong, Queensland and Japan are compared in the **Appendix**.

## 2. Hong Kong

2.1 In Hong Kong, the **Employees' Compensation Ordinance** (Cap. 282) was enacted in 1953<sup>7</sup> to establish a no-fault and non-contributory employees' compensation system for work injuries. The Ordinance sets out the obligations and rights of employers and employees in respect of work injuries and death caused by accidents arising out of and in the course of employment, or by prescribed occupational diseases.

2.2 Under the Employees' Compensation Ordinance, employers are required to provide compensation to their employees who sustain injuries or

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<sup>5</sup> See *Official Records of Proceedings of the Legislative Council* (2010) 19 May.

<sup>6</sup> This information note only studies the employees' compensation for workers who are injured on the job.

<sup>7</sup> According to Ng (2015) and HKU (1996), the Employees' Compensation Ordinance, which was formerly known as Workmen's Compensation Ordinance, was adapted from the Workmen's Compensation Act 1925 of the United Kingdom. The Workmen's Compensation Act 1925 was subsequently superseded by the National Insurance (Industrial Injuries) Act 1946, but Hong Kong has hitherto followed the "old" system of 1953.

die in work accidents arising out of and in the course of their employment, regardless of whether the employees have committed acts of faults or negligence when the accident occurred (i.e. the "no-fault system"). To ensure employers' ability to pay the injured employees, employers are required to take out employees' compensation insurance with private insurers to cover their liabilities under the Ordinance and common law compensation, if any, awarded by the court.<sup>8</sup>

2.3 The Employees' Compensation Ordinance has undergone numerous amendments since its inception in 1953.<sup>9</sup> Most of the amendments revolved around the pecuniary aspects of compensation payable to injured workers, while leaving the underlying principles and operation of the employees' compensation system largely unchanged. Amid the changing labour market conditions, there are concerns over the adequacy of employees' protection under the existing legislative framework, particularly in view of the coverage and limitations of the system as discussed below.

#### Coverage of the system

2.4 At present, the Employees' Compensation Ordinance applies to all full-time or part-time employees who are employed under contracts of service or apprenticeship. Employees who are injured while working outside Hong Kong are also covered if they are employed in Hong Kong by local employers. Yet, there are still areas/workers not covered under the Ordinance such as:

- (a) **Commuting trips:** Under the Ordinance, an employer is not liable for the compensation in respect of accidents happened to his or her employees travelling as passengers to or from their place of work, unless the means of transport is operated or arranged by the employer concerned and other than as part of a public transport service; and

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<sup>8</sup> Injured employees who fail to receive the compensation after exhausting all legal and financially viable means of recovery from the employer or insurer concerned may apply for the payment of compensation from the Employees Compensation Assistance Fund. The Fund is financed by a levy imposed on all employees' compensation insurance policies. See Employees Compensation Assistance Fund Board (2018).

<sup>9</sup> The Ordinance had amended 89 times since its enactment in 1953. See Department of Justice (2018).

- (b) **Outworkers and casual workers:** The Ordinance does not apply to people working from home (i.e. outworkers) and casual workers<sup>10</sup>. There is currently no self-insured compensation insurance product available for them in the private insurance market, and they could only take out personal accident insurance policies with a higher premium.

### Limitations of the system

2.5 The legislative framework of existing employees' compensation system has remained largely unchanged since its introduction in 1953. There are views that the system is not keeping pace with the development of society<sup>11</sup>, as reflected by the concerns raised by various stakeholders over the following areas:

- (a) **Problems of taking out insurance:** The premium rate averaged at 0.5% of an employee's wage in 2017. Yet, some employers have been declined insurance cover or charged with very high premium rates (81.7% for diving which is the industry with the highest risk)<sup>12</sup> for taking out employees' compensation insurance because of the high-risk work nature and records of making claims for employees' compensation. They could only file applications with the Employees' Compensation Insurance Residual Scheme set up by the Hong Kong Federation of Insurers<sup>13</sup>;

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<sup>10</sup> The exceptions are those casual workers who are part-time domestic helpers, employees employed either for the purposes of the employer's trade or business, or for the purposes of any game or recreation and are engaged or paid through a club.

<sup>11</sup> See, for example, HKU (2016) and SCMP (2015).

<sup>12</sup> However, the private insurer recorded an overall underwriting loss of HK\$541 million in 2017. See Insurance Authority (2018) and Employees' Compensation Insurance Residual Scheme Bureau (2017b).

<sup>13</sup> The Employees' Compensation Insurance Residual Scheme came into place in 2007 to provide the last-resort covers for employers having difficulties in taking out employees' compensation insurance, provided that (a) the employers have been declined insurance cover by at least three insurers; or (b) the premium rate quoted by an insurer willing to provide the insurance is 30% over the corresponding premium benchmark rate of relevant high-risk industry specified by the Scheme. See Employees' Compensation Insurance Residual Scheme Bureau (2017b).

- (b) **Limited role of the Labour Department:** The Labour Department will normally be involved if there is a dispute between an employer and an employee in a work injury case. It will study the case, explain the provisions of the Employees' Compensation Ordinance to both parties, and advise them on the likelihood of the case being a work injury. However, the Labour Department is not empowered to rule on labour disputes involving work injury compensation. For those cases which cannot be resolved, the employee concerned is entitled to seek adjudication from the court and the Labour Department will assist him or her to apply for legal aid from the Legal Aid Department;
- (c) **Lack of specification for rehabilitation under the Employees' Compensation Ordinance:** As mentioned above, ILO considers that employees' compensation should not only provide financial support to workers who are injured on the job, but also include medical services and vocational rehabilitation to assist them in returning to work. In Hong Kong, there is a lack of specification for rehabilitation under the Employees' Compensation Ordinance. The referral of injured workers to occupational rehabilitation relies on a voluntary programme – the Voluntary Rehabilitation Programme – jointly launched by the Labour Department and the insurance industry.<sup>14</sup> There are views that under a voluntary scheme, many cases are not referred to occupational rehabilitation which result in a less than satisfactory return to work outcome<sup>15</sup>;
- (d) **Difficulties in assessing mental impairment and death from overexertion:** Mental impairment is only compensable if it can be proved to be related to the work accidents encountered by the injured employees. According to the Government<sup>16</sup>, work-related mental impairment cases are not easy to substantiate as the related symptoms usually arise in a considerable period of time after the accident. Employers may not be aware of the full extent of the injuries caused to the employees at the time they

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<sup>14</sup> The participating insurers in the programme would identify *appropriate* work injury cases, initiate contacts with the injured employees and invite them to join the programme.

<sup>15</sup> See Kwok (2011).

<sup>16</sup> See GovHK (2010).

submit the accident notification to the Labour Department. As for death from overexertion, it is not covered under the existing employees' compensation system. The Government considers it a complicated issue and difficult to ascertain whether workload or work pressure has contributed to the sudden death of the employee in the course of the employment<sup>17</sup>; and

- (e) **Dependence on the First Schedule of the Employees' Compensation Ordinance:** The Employees' Compensation Assessment Board<sup>18</sup> is responsible for conducting the assessment of permanent total or partial loss of earning capacity suffered by an injured employee, which in turn determines the amount of the compensation payable to him or her. The assessment is based on the First Schedule annexed to the Employees' Compensation Ordinance which maps out the percentage of loss of earning capacity to a number of injuries.<sup>19</sup> The First Schedule is currently the only reference available to the assessors, which lists out 48 types of injuries and their corresponding percentages of incapacity. In case the injury is not specified, the percentage shall be assessed having regard so far as possible to the First Schedule.

### 3. Queensland of Australia

3.1 The origin of Australia's employees' compensation system lies in the 19<sup>th</sup> century British law.<sup>20</sup> The underlying principle of the system is that employers should bear the "full costs" of their employees including those

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<sup>17</sup> See GovHK (2018).

<sup>18</sup> If a work accident would likely result in permanent total or partial incapacity of the injured workers, the case will be referred to the Employees' Compensation Assessment Board. The Board shall consist of (a) two persons each of whom shall be a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist; and (b) a Senior Labour Officer or a Labour Officer.

<sup>19</sup> For example, loss of arm at shoulder and loss of sight of one eye are equivalent to a person with a 75% and 50% loss of earning capacity respectively.

<sup>20</sup> Before the implementation of the system, an injured employee's only means of receiving compensation was to sue his or her employer for negligence at common law.

associated with work injuries.<sup>21</sup> While each of the eight states and territories in Australia has developed its own employees' compensation legislation, they share the common principle of linking compensation and rehabilitation together through providing injured workers with financial support and helping them to return to work.

3.2 All Australian jurisdictions adopt a "no fault" employees' compensation scheme, under which employees have the right to apply for statutory compensation, no matter who or what caused their workplace injury. Employers are required to take out employees' compensation insurance to cover their potential liabilities to injured employees. Queensland, Victoria and South Australia employ a central employees' compensation system, whereas the other states and territories require employers to take out the insurance with private insurers.

3.3 In Queensland, the Workers' Compensation and Rehabilitation Act 2003 ("the Queensland Act") and associated Workers' Compensation and Rehabilitation Regulation 2014 ("the Queensland Regulation") establish an employees' compensation scheme for the state. The Queensland Act establishes the legislative framework for managing employees' compensation and rehabilitation in Queensland, whereas the Queensland Regulation provides the operation detail of the scheme in relation to insurance, compensation, rehabilitation, damages and costs.

3.4 Pursuant to the Queensland Act, WorkCover Queensland and the Workers' Compensation Regulator have been established to be entrusted with performing the following roles and responsibilities:

- (a) **WorkCover Queensland** serves as an independent government-owned statutory body to (i) act as the sole public insurer to cover the employees for work injuries; (ii) advise employers of their responsibilities if their employees are injured at work; and (iii) audit Queensland's businesses to ensure they have adequate insurance to cover their employees; and

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<sup>21</sup> According to the Australian government, work injuries refer to "the full range of physical injuries, ailments, illnesses, aggravation or acceleration of pre-existing injuries". See Safe Work Australia (2014).

- (b) **Workers' Compensation Regulator** is appointed by the Queensland government to (i) determine the premium rates; (ii) regulate the employees' compensation system; (iii) resolve employees' compensation disputes; (iv) offer education to employers and employees about the system; and (v) provide rehabilitation advisory services.

3.5 Being the foundation for the employees' compensation system in Queensland, the Queensland Act has undergone several substantial amendments since 1990.<sup>22</sup> The salient features of today's employees' compensation system as set out by the Queensland Act are summarized below.

#### Coverage of the system

3.6 Queensland has put in place a comprehensive employees' compensation system with the inclusion of journey claims and outworkers/casual workers into the system.

#### *Journey claims*

3.7 If an injury occurs to an employee during the following journeys, it is compensable under section 35 of the Queensland Act:

- (a) a journey between the employee's home and the workplace;
- (b) a journey between the employee's home/workplace and a trade, technical or other training school which the employee is either required to attend under the terms of his or her employment, or that the employer expects the employee to attend;

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<sup>22</sup> These included (a) introduction of the rehabilitation initiatives in 1990; (b) establishment of WorkCover Queensland and the Workers' Compensation Regulator in 1996 and 2003 respectively; and (c) removal of the 5% permanent impairment threshold for workers to seek damages in 2015.



- (c) if the employee has an existing injury for which employees' compensation is payable and he or she is journeying between his or her home/workplace and a place to obtain medical or hospital advice, attention or treatment; to undertake rehabilitation; for a medical examination; or to receive payment of compensation; and
- (d) between the employee's place of employment with one employer and the employee's place of employment with another employer.

### *Outworkers and casual workers*

3.8 In Queensland, employees' compensation system applies to workers who work under a contract of services. It also covers outworkers and workers who may only be with the company for a short time (e.g. casual, part-time and seasonal workers).

### Comprehensiveness of the system

3.9 Queensland's employees' compensation system is also characterized by its comprehensiveness in terms of availability of insurance to all employers; the role of Workers' Compensation Regulator to review claims matters; the publication of guidelines for assessing permanent impairment; a mandatory rehabilitation programme; and wide coverage of work-related mental injuries.

### *Availability of insurance to all employers*

3.10 In Queensland, WorkCover Queensland serves as the sole public insurer in performing functions similar to those of a private employees' compensation insurer. Under the central employees' compensation system, most employers, even those of high-risk industries, are covered and insured by WorkCover Queensland against all statutory and damages claim costs in the event of a work-related injury to their employees. Meanwhile, self-insurance is available to large organizations that employ at least 2 000 full-time employees in Queensland. Self-insured organizations can provide accident

insurance for their employees, instead of insuring with WorkCover Queensland, if they can prove to be financially capable to do so.<sup>23</sup>

### *Workers' Compensation Regulator to review claims matters*

3.11 While WorkCover Queensland provides insurance to businesses in Queensland which employ workers, Workers' Compensation Regulator is responsible for monitoring the employees' compensation system. Specifically, the latter is responsible for undertaking review of claims-related decisions and managing appeal under chapter 13 of the Queensland Act. This function is delegated and undertaken by the Office of Industrial Relations<sup>24</sup>, which is independent of WorkCover Queensland and self-insurers. When an insurer has decided on a claim, the worker or claimant concerned who is dissatisfied with the decision can apply to the Office of Industrial Relations for a review.

3.12 The review service is free, and the worker/claimant can further lodge his or her appeal with the Queensland Industrial Relations Commission if he or she disputes the review decision made by the Office of Industrial Relations. In Queensland, the Commission is an independent tribunal established to conciliate and arbitrate industrial matters, which include the finality of the review decision made by the Office of Industrial Relations.

### *Guidelines for Evaluation of Permanent Impairment*

3.13 The Workers' Compensation Regulator has published a 103-page *Guidelines for Evaluation of Permanent Impairment* ("the Queensland Guide") for the purpose of assessing the degree of permanent impairment that arises from the injuries in the context of employees' compensation.<sup>25</sup> When a person sustains a permanent impairment, it is intended that the Queensland Guide be used by medical assessors trained in the evaluation of permanent

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<sup>23</sup> See Business Queensland (2017c) and Safe Work Australia (2014).

<sup>24</sup> The Office of Industrial Relations is a government agency with responsibility for coordination and regulation of workplace health and safety, electrical safety, and employees' compensation regulation in Queensland.

<sup>25</sup> The methodology set out in Queensland Guide is largely based on the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fifth Edition), which is the most authoritative and widely used source for evaluating permanent impairment around the world. See Workers' Compensation Regulator (2016b).

impairment to ensure an objective, fair and consistent method for evaluating the degree of impairment. The report of the evaluation of permanent impairment compiled by a medical assessor should be accurate, comprehensive and fair, including:

- (a) a medical history;
- (b) clinical evaluation details such as the range of movement, neurological findings and any relevant investigations;
- (c) assessment of whether the injury is stable and stationary, as only injuries that are stable and stationary can be considered for assessment of permanent impairment<sup>26</sup>;
- (d) methodology used for the assessment;
- (e) nature of the permanent impairment (description of work related medical injury) and calculated degree of permanent impairment<sup>27</sup> based on the concept of whole person impairment<sup>28</sup>; and
- (f) any other issues which are relevant to the impairment assessment.

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<sup>26</sup> In order to show a permanent impairment has been sustained, an assessment of the employee's injuries by an approved medical specialist is required. This assessment will only occur after the injuries have stabilized, which means they have reached a maximum level of improvement and are unlikely to deteriorate in future.

<sup>27</sup> The Queensland Act requires injured workers to be assessed as having up to a 20% degree of permanent impairment ("DPI") to either accept a lump sum payment or to pursue common law damages. If they are assessed as having more than a 20% DPI, they are entitled to accept the lump sum compensation as well as seek damages via the common law process. See WorkCover Queensland (2017b).

<sup>28</sup> The whole person impairment concept provides for compensation for the permanent impairment of any body part, system or function to the extent to which it permanently impairs the injured worker as a whole person. See Comcare (2016).

### *Mandatory rehabilitation programme*

3.14 Under the Queensland Act, employers are required to appoint a rehabilitation and return to work coordinator to help arrange rehabilitation and return to work programmes for the injured workers.<sup>29</sup> The injured employees are required to participate in the rehabilitation programmes, and failing to do so might result in the suspension of their entitlement to compensation.

3.15 With an aim to help the injured employees to stay at or return to work in a timely manner, employers are also required to (a) develop a return to work plan to modify the workplace and work duties, as necessary; and (b) design a suitable duties plan to assign the tasks different from the injured employees' usual duties, but allow them to remain in the workplace during their recovery.

### *Wide coverage of work-related mental injuries*

3.16 In addition to mental injuries related to a physical injury or arising from trauma, other work-related mental injuries are compensable in Queensland.<sup>30</sup> The Queensland Guide has set out detailed guidelines in evaluating psychiatric impairment in view of the difficulties in substantiating the cases relating to work-related mental injuries.<sup>31</sup> Behavioural consequences of psychiatric disorder are assessed on six scales, each of which evaluates an area of functional impairment, namely (a) self-care and personal hygiene; (b) social and recreational activities; (c) travel; (d) social functioning; (e) concentration, persistence and pace; and (f) employability. Impairment in each area is rated using class descriptors with classes ranging from 1 to 5 in accordance with severity. Class 1 means no or minor impairment, whereas class 5 denotes total impairment.

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<sup>29</sup> The functions of the coordinator include (a) developing the rehabilitation programme and return to work plan, if required, in consultation with the worker, the worker's employer and treating medical practitioner; (b) monitoring and ensuring the work plan is consistent with the current medical certificate or report for the worker's injury; and (c) educating workers and management about workplace rehabilitation.

<sup>30</sup> Nevertheless, employees' compensation is not given for general "harm", such as hurt feelings or emotional distress or as the result of discrimination. See Safe Work Australia (2014).

<sup>31</sup> See Workers' Compensation Regulator (2016b).

## Performance of Queensland's employees' compensation system

3.17 Under the central employees' compensation system, WorkCover Queensland has realized its aim to "support injured workers to return to work at the lowest cost to employers", as concluded in the Auditor-General Report to Queensland Parliament.<sup>32</sup> According to the WorkCover Queensland Annual Report 2016-2017, WorkCover has maintained the lowest average premium rate in Australia, at 1.2% of wage, for the third consecutive year.<sup>33, 34</sup> Another key performance indicator highlighted in the 2016-2017 report was achieving a 92.5% return to work rate for injured employees, attributable to the implementation of the mandatory rehabilitation programme.

## 4. Japan

4.1 Japan's employees' compensation system can trace its root back to the 1910s. At that time, employers were for the first time required to provide their employees with assistance for on-the-job injuries under the then Factory Act, the first labour protection law in Japan. After the Second World War, the Japanese government enacted the **Industrial Accident Compensation Insurance Act** (Law No. 50 of 1947) ("the Japanese Insurance Act") and the **Labor Standards Act** (Law No. 49 of 1947) in 1947 to protect injured employees. These two laws remain in place today as the foundation of Japan's employees' compensation system.

4.2 In Japan, employees' compensation is currently a no-fault system whereby employers compensate employees who are injured or became ill in the course of the employment. Employers are required under the Japanese Insurance Act to take out the government-administered employees' compensation insurance to "grant necessary insurance benefits to workers in order to give them prompt and fair protection against injury".<sup>35</sup> A merit system has been introduced to encourage employers to make efforts in preventing work injuries. Under the system, the premium rates and amount of compensation payable depend on the number of work-related accidents happened.

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<sup>32</sup> See Queensland Audit Office (2015).

<sup>33</sup> See WorkCover Queensland (2017a).

<sup>34</sup> Separately, the premium rate for tree lopping and arborist service, the highest-risk industry in Queensland, was at a mere 9.087% in 2016-2017. See Safe Work Australia (2017).

<sup>35</sup> See Ministry of Justice of Japan (2018a).

4.3 The Ministry of Health, Labour and Welfare has established the **Labour Standards Bureau** to administer the employees' compensation insurance system and promote the return of injured workers to work. On daily operation, the Labour Standards Bureau has entrusted its 343 prefectural **Labour Standards Inspection Offices** with duties including (a) releasing compensation payments to the injured workers; (b) resolving employees' compensation disputes; (c) conducting safety inspections for manufacturing facilities; (d) carrying out investigations for industrial accidents and giving advice on how to prevent recurrence; and (e) educating employers and employees about the employees' compensation system.

4.4 The Japanese Insurance Act has undergone a number of amendments since its enactment in 1947.<sup>36</sup> The salient features of the Japanese employees' compensation system today as set out under the Japanese Insurance Act are summarized below.

#### Coverage of the system

4.5 **Commuting trips:** Employees' accidents in Japan are divided into "employment accidents" and "commuting accidents", and commuting accidents have been covered by the Japanese Insurance Act since 1973.<sup>37</sup> Under the Japanese Insurance Act, commuting shall mean any of the following journeys made by an employee in connection with his or her employment by a reasonable route and means of transport: (a) travel between the employees' residence and the workplace or a location assigned by the employer; or (b) travel between multiple workplaces.

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<sup>36</sup> These include extending insurance coverage to include those private companies employing less than five workers in 1972; extending benefits to cover commuting accidents in 1973; establishing rules on the entitlements between insurance benefits and damages claims in 1981; and providing compensation for death caused by overexertion (known as "karoshi" in Japan) in 2001.

<sup>37</sup> When the employees' compensation system was introduced in 1947, commuting accidents were not initially covered as the majority view at that time considered that employers had no influence at all on "road traffic" risks. Under pressure from the trades unions, a commission was set up in February 1970 under the aegis of the Ministry of Labour. The commission eventually came to the conclusion that modernisation and urbanization increased the road traffic and the ensuing risk of being injured during commuting to or from work. As such, the government should provide the same protection for commuting accidents as that already given to occupational accidents. On 1 December 1973, injuries sustained during commute were included in the revised Japanese Insurance Act. See Munich Re Group (2004) and Xie (2015).

4.6 **Outworkers and casual workers:** The Japanese employees' compensation system is applied compulsorily to all employees who are employed in enterprises to which the Labor Standards Act is applied and receive wages. They include those regularly or temporarily employed employees, daily-wage employees, outworkers and casual workers, irrespective of the size of enterprises.

#### Comprehensiveness of the system

4.7 Japan's employees' compensation system also features the availability of out-of-court alternative for resolving claims disputes, establishment of 39 hospitals specialized in treating injured workers, and inclusion of mental disorders and karoshi<sup>38</sup> into the system.

#### *Availability of out-of-court alternative for resolving claims disputes*

4.8 While the employees' compensation insurance is managed by the government, the Labour Standards Inspection Offices would examine each claim case and decide the amount of compensation benefits payable to the worker. The Offices may consult with the Ministry of Health, Labour and Welfare if necessary.

4.9 If the claimant is dissatisfied with the decision made by Labour Standards Inspection Offices, he or she can demand a re-examination by an Industrial Accident Compensation Insurance examiner appointed by the Minister of Health, Labour and Welfare. If the claimant disputes the examiner's decision, a further appeal can be made to the Labour Insurance Appeal Committee<sup>39</sup> for a third examination. The claimant can bring the case before the court if he or she is still not satisfied with the decision made by the Committee.

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<sup>38</sup> Karoshi is a Japanese term to describe death attributed to overwork.

<sup>39</sup> The Labour Insurance Appeal Committee consists of five active and former professors, two judges, one medical doctor and one representative from the insurance business sector.

### *Establishment of hospitals specialized in treating injured workers*

4.10 In Japan, an injured worker can receive medical assessment and treatment free of charge at Rosai hospitals<sup>40</sup> or other employees' compensation designated medical facilities. The Ordinance for Enforcement of the Labor Standards Act sets out a total of 14 grades of disability based on 125 criteria, and requires the assessment of the level of permanent impairment of the injured workers to be performed by designated medical assessors.

4.11 The Japanese government has set up 39 Rosai hospitals across the country specialized in providing medical care services and implementing rehabilitation programmes for injured workers, as well as supporting them to return to work. In Rosai hospitals, injury rehabilitation programmes are delivered by a team of rehabilitation specialists including physical therapists, occupational therapists, speech pathologists and medical social workers. After discharged from the hospital, the injured workers will be provided with home-visit rehabilitation services before returning to work.

### *Inclusion of mental disorders and karoshi*

4.12 Mental disorders due to work are included among compensable diseases in Japan, and the inclusion can be traced back to 1996 when two court rulings on employees' compensation claims admitted the casual relationship between work and mental disorders.<sup>41</sup> Amid widespread media coverage of the two court cases, similar compensation claims increased after the rulings. The then Ministry of Labour decided to establish compensation criteria for mental disorders in an office notice issued in September 1999. The compensation criteria were revised in December 2010, and this latest version is still in effect today.<sup>42</sup>

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<sup>40</sup> Rosai hospital is a Japanese term to describe the hospital specialized in treating injured workers.

<sup>41</sup> The two rulings were ruled in favour of the plaintiffs regarding the Dentsu Incident (a damages claim) of March 1996 and the Incident of the Kakogawa Labour Standards Inspection Office Case (a rescission claim on the decision not to approve benefits payment under the Japanese Insurance Act) of April 1996. See International Labour Organization (2013a).

<sup>42</sup> The latest amendment to the compensation criteria was announced in December 2010. It loosened the criteria of average overtime working hours that could be considered as having "heavy workloads" and leading to compensable stress-induced cardiovascular and cerebrovascular events. See Cheng (2011).



4.13 Karoshi was included among compensable diseases as early as in the 1950s, but the assessment criteria were criticized for being too strict to hinder the approval of compensation. However, it was not until the mid-1990s that the Japanese government started to relax the compensation criteria for karoshi. In 2001, a Supreme Court ruling prompted a further revision of the compensation criteria for karoshi<sup>43</sup>, and this latest version has remained valid as of today.

#### *Performance of Japan's employees' compensation system*

4.14 Without payment of commission to insurance intermediaries, the Japanese government manages to maintain the average premium rate of its employees' compensation system at a low of 0.45% of wage in April 2018.<sup>44</sup> The premium rate charged for the forestry industry, the highest risk industry in Japan, was 6%.<sup>45</sup>

## **5. Concluding remarks**

5.1 In Hong Kong, the Employees' Compensation Ordinance came into the place in 1953 requiring employers to take out employees' compensation insurance with private insurers. The employees' compensation system has remained largely unchanged since then, despite frequent amendments to the pecuniary aspects of compensation. Queensland and Japan moved ahead much earlier than Hong Kong in implementing an employees' compensation system, with the government performing functions similar to a private insurer. Over the years, Queensland and Japan have introduced a number of amendments to their legislative frameworks, in a move to improve the coverage and comprehensiveness of the employees' compensation system.

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<sup>43</sup> Prior to the 2001 revisions, only "overburden" in the week before a "catastrophe" was considered compensable. In 2000, the Supreme Court made a decision to affirm the employer's responsibility to care for his or her workers' health after the Dentsu case. In that court case, a 24-years-old employee of the Japanese advertising giant, Dentsu, was under the pressure by his employer to work for 17 months without a day off before committing suicide. The Supreme Court interpreted "overburden" as "accumulated fatigue due to overwork of long duration". Moreover, in addition to "catastrophe" in the week before death, a roughly six-month period of accumulated fatigue has been considered in compensation decisions thereafter. See North and Morioka (2016).

<sup>44</sup> See Ministry of Health, Labour and Welfare of Japan (2017b).

<sup>45</sup> See Ministry of Health, Labour and Welfare of Japan (2017a).

5.2 Both Queensland and Japan apply the employees' compensation system to all workers including outworkers and casual workers. Added to this, commuting trips are covered in both places. In contrast, Hong Kong excludes outworkers/casual workers and commuting trips, unless the latter is made by a means of transport operated or arranged by the employer and other than as part a public transport service.

5.3 Queensland and Japan also feature a wide coverage of work-related mental injuries. In Queensland, the Queensland Guide has set out detailed guidelines in evaluating psychiatric impairment. Behavioural consequences of psychiatric disorders are assessed on functional impairment related to activities of daily living, social functioning, concentration, persistence and pace, and employability. In Japan, mental disorders and karoshi are compensable and their compensation criteria have been revised to keep pace with the changing labour market conditions.

5.4 Mental impairment is also compensable in Hong Kong, provided that it can be proved to be related to the work accidents encountered by the injured employees. However, the Government considers such claims cases difficult to substantiate, and the First Schedule of the Employees' Compensation Ordinance has not included the work-related mental impairment in the 48 types of injuries for assessing the loss of earning capacity of injured employees. In contrast to the case of Japan, the death from overexertion is not covered in Hong Kong. The Government considers it difficult to substantiate the claim cases in view of the difficulties in ascertaining whether the related symptoms are work-related.

5.5 In addition, Queensland and Japan provide out-of-court alternative for resolving claims disputes. If the claimant is not satisfied with the amount of compensation payable, he or she can appeal to the relevant authorities for re-examination of the claims decision before bringing the case to the court. In Hong Kong, the Labour Department is not empowered to adjudicate on labour disputes involving work injury compensation. For those cases which cannot be resolved by employees and employers themselves, they might have to seek adjudication from the court.

5.6 The international practice for managing workplace injuries is early and comprehensive intervention to facilitate workers' rehabilitation, i.e. the "return to work" model. As such, Queensland has put in place a mandatory rehabilitation programme requiring employers to appoint a rehabilitation and return to work coordinator to help arrange rehabilitation and return to work programmes for the injured workers. The injured employees are required to participate in the rehabilitation programmes, and failing to do so might result in the suspension of their entitlement to compensation.

5.7 While injured workers' participation in rehabilitation programmes in Japan is voluntary, there are 39 specialized Rosai hospitals set up by the government to provide medical care services and implement rehabilitation programmes for injured workers, as well as supporting them to return to work. In these Rosai hospitals, injury rehabilitation programmes are delivered by a team of rehabilitation specialists including physical therapists, occupational therapists, speech pathologists and medical social workers. In Hong Kong, the referral of injured workers to occupational rehabilitation relies on a voluntary programme – the Voluntary Rehabilitation Programme – jointly launched by the Labour Department and the insurance industry, and there are concerns that not all cases may be referred to this voluntary programme.

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Table 1 – Overview of employees' compensation systems in Hong Kong, Queensland and Japan

	Hong Kong	Queensland	Japan
<b>1. Legal framework</b>			
<b>(a) Key legislation</b>	<ul style="list-style-type: none"> <li>Employees' Compensation Ordinance (Cap. 282)</li> </ul>	<ul style="list-style-type: none"> <li>Workers' Compensation and Rehabilitation Act 2003</li> </ul>	<ul style="list-style-type: none"> <li>Industrial Accident Compensation Insurance Act, and</li> <li>Labor Standards Act</li> </ul>
<b>(b) Purposes of legislation</b>	<ul style="list-style-type: none"> <li>To provide for the payment of compensation to employees who are injured on the job.</li> </ul>	<ul style="list-style-type: none"> <li>To regulate the employees' compensation scheme; and</li> <li>To set up Workers' Compensation Regulator and WorkCover Queensland for the operation and regulation of the system.</li> </ul>	<ul style="list-style-type: none"> <li>To give employees prompt and fair protection through compensation for work injuries happened to them; and</li> <li>To promote social rehabilitation of workers.</li> </ul>
<b>2. Definition of work injury</b>			
<b>(a) Basic definition</b>	<ul style="list-style-type: none"> <li>An injury or death as a result of an accident arising out of and in the course of employment.</li> </ul>	<ul style="list-style-type: none"> <li>An injury or death arising out of or in the course of employment.</li> </ul>	<ul style="list-style-type: none"> <li>An injury, disability or death resulting from employment-related cause.</li> </ul>
<b>(b) Coverage on commuting trips</b>	Not covered, unless the transport is: <ul style="list-style-type: none"> <li>operated or arranged by employer; and</li> <li>not a public transport service.</li> </ul>	✓	✓
<b>(c) Coverage of particular types of injury</b>			
- Mental disorder arising from physical injuries or Post-traumatic Stress Disorder	✓	✓	✓
- Mental disorder arising from other work-related reasons	x	✓	✓
- Death from overexertion	x	x	✓

Table 1 – Overview of employees' compensation systems in Hong Kong, Queensland and Japan (cont'd)

	Hong Kong	Queensland	Japan
<b>3. Injury liabilities for work accidents</b>	Employer	Employer	Employer
<b>4. Employees' compensation insurance underwriter</b>	Private insurers	Government (i.e. WorkCover Queensland) for most employers; and private insurers for self-insured large corporations	Government (i.e. Labour Standards Bureau)
<b>5. Coverage by types of worker</b>			
<b>(a) Regular employees</b>	✓	✓	✓
<b>(b) Casual workers</b>	(#)	✓	✓
<b>(c) Outworkers</b>	×	✓	✓
<b>6. Common law actions concerning negligence claims or damages</b>	<ul style="list-style-type: none"> <li>The Ordinance does not limit the civil liability of an employer.</li> <li>The damages awarded shall be reduced by the value of the employees' compensation paid or payable under the Ordinance.</li> </ul>	<ul style="list-style-type: none"> <li>Employees have the right to sue their employer for negligence through a common law or damages claim.</li> </ul>	<ul style="list-style-type: none"> <li>In the event that an employer has paid compensation under this Act, the employer shall be exempt, up to the amount of such payments, from the responsibility for damages under the Civil Code based on the same grounds.</li> </ul>

Note: (#) The Employees' compensation ordinance does not apply to casual workers except part-time domestic helpers, workers employed for the employer's trade or business; and performers engaged or paid through a club.

Table 2 – Administration of employees' compensation systems in Hong Kong, Queensland and Japan

	Hong Kong	Queensland	Japan
<b>1. Administrative authorities and their duties</b>	<p><b>Labour Department</b></p> <ul style="list-style-type: none"> <li>To ensure employers securing adequate insurance;</li> <li>To ensure speedy and effective claims for compensation; and</li> <li>To advise employers and employees on their rights and obligations.</li> </ul>	<p><b>Workers' Compensation Regulator</b></p> <ul style="list-style-type: none"> <li>To determine the premium rates;</li> <li>To resolve dispute between employees and employers;</li> <li>To serve as a medical assessment tribunal;</li> <li>To provide rehabilitation advisory services; and</li> <li>To educate employers and employees about the compensation system.</li> </ul> <p><b>WorkCover Queensland</b></p> <ul style="list-style-type: none"> <li>To underwrite insurance; and</li> <li>To implement rehabilitation and return to work programmes.</li> </ul>	<p><b>Labour Standards Bureau and Labour Standards Inspection Offices</b></p> <ul style="list-style-type: none"> <li>To determinate the premium rates;</li> <li>To release compensation payments to injured workers;</li> <li>To resolve employees' compensation disputes;</li> <li>To carry out investigations for industrial accidents, give advice on how to prevent recurrence;</li> <li>To conduct safe inspections; and</li> <li>To educate employers and employees about the compensation system.</li> </ul>
<b>2. Employers' roles and liabilities</b>	<ul style="list-style-type: none"> <li>To take out employees' compensation insurance;</li> <li>To pay compensation for their injured employees; and</li> <li>To notify the Commissioner for Labour of workplace accidents.</li> </ul>	<ul style="list-style-type: none"> <li>To take out employees' compensation insurance;</li> <li>To notify WorkCover Queensland of workplace accidents; and</li> <li>To arrange rehabilitation and return to work programmes.</li> </ul>	<ul style="list-style-type: none"> <li>To take out employees' compensation insurance; and</li> <li>To notify Labour Standards Bureau of workplace accidents.</li> </ul>

Table 2 – Administration of employees' compensation systems in Hong Kong, Queensland and Japan (cont'd)

	Hong Kong	Queensland	Japan
<b>3. Funding sources to employees' compensation insurance</b>	<ul style="list-style-type: none"> <li>Premiums paid by employers.</li> </ul>	<ul style="list-style-type: none"> <li>Premiums paid by employers.</li> <li>Investment returns by WorkCover Queensland.</li> </ul>	<ul style="list-style-type: none"> <li>Premiums paid by employers.</li> <li>Government subsidies, if needed.</li> </ul>
<b>4. Determination of premium rates and its criteria</b>	<ul style="list-style-type: none"> <li>Commercial decision of private insurers.</li> </ul>	<ul style="list-style-type: none"> <li>Determined by the Workers' Compensation Regulator:               <ul style="list-style-type: none"> <li>(a) insurance industry practice (e.g. risk level); and</li> <li>(b) policyholders' claims records.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Determined by Labour Standards Bureau.</li> <li>Under the merit system, premium rates depend on the number of work accidents happened.</li> </ul>
<b>5. Recent level of premium rates (% of wage)</b>	<ul style="list-style-type: none"> <li>In 2017:               <ul style="list-style-type: none"> <li>(a) Average: 0.5%.</li> <li>(b) Highest: 81.7% (diving).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>In 2015-2016:               <ul style="list-style-type: none"> <li>(a) Average: 1.2%.</li> <li>(b) Highest: 9.087% (tree lopping and arborist service).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>In 2015-2016:               <ul style="list-style-type: none"> <li>(a) Average: 0.45%.</li> <li>(b) Highest: 6.0% (forestry).</li> </ul> </li> </ul>

Table 3 – Handling of permanent impairment cases in Hong Kong, Queensland and Japan

	Hong Kong	Queensland	Japan
<b>1. Guidelines for assessment of permanent impairment due to work injury</b>	<ul style="list-style-type: none"> <li>• First Schedule to the Ordinance</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory guidelines issued by Workers' Compensation Regulator for evaluation of permanent impairment</li> </ul>	<ul style="list-style-type: none"> <li>• Ordinance for Enforcement of the Labor Standards Act</li> </ul>
<b>2. Criteria for assessment of permanent impairment</b>	<ul style="list-style-type: none"> <li>• 48 types of injuries covering: <ul style="list-style-type: none"> <li>(a) upper and lower extremities;</li> <li>(b) eye, ear and nose structures;</li> <li>(c) spleen; and</li> <li>(d) urinary systems.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 103-page guidelines covering: <ul style="list-style-type: none"> <li>(a) upper and lower extremities;</li> <li>(b) 12 body systems;</li> <li>(c) psychological and psychiatric disorders; and</li> <li>(d) impairment arising from chronic pain.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 125 criteria of assessment for different body systems.</li> </ul>
<b>3. Types of compensation and factors taken in consideration</b>	<ul style="list-style-type: none"> <li>• Periodical sick leave payments;</li> <li>• Medical, surgical and hospital expenses; and</li> <li>• Lump sum compensation for permanent impairment, determined based on: <ul style="list-style-type: none"> <li>(a) results of assessment of permanent loss of earning capacity; or</li> <li>(b) nature of injury relating to the worker's employment, qualification and experience, under special circumstances.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Weekly compensation for lost wages;</li> <li>• Medical, surgical and hospital expenses;</li> <li>• "Travelling expenses" for transport to receive medical and rehabilitation services; and</li> <li>• Lump sum compensation for permanent impairment, determined based on assessment results.</li> </ul>	<ul style="list-style-type: none"> <li>• Regular and lump sum special payments for lost wages;</li> <li>• Medical, surgical and hospital expenses provided by private hospitals or free services provided by 39 Rosai hospitals;</li> <li>• "Transportation expenses" for travelling to/from medical institutions;</li> <li>• Injury and disease (compensation) pension for permanent impairment;</li> <li>• Disability (compensation) benefits; and</li> <li>• Nursing care (compensation) benefits.</li> </ul>



Table 3 – Handling of permanent impairment cases in Hong Kong, Queensland and Japan (cont'd)

	Hong Kong	Queensland	Japan
<b>4. Dispute handling</b>	<ul style="list-style-type: none"> <li>Labour Department explains the Ordinance to both employers and employees on the likelihood and relevance of the case being a work injury. Labour Department is not empowered to rule on the dispute.</li> <li>If the case cannot be resolved by the employee and employer themselves, the employee or employer can seek the court's adjudication.</li> </ul>	<ul style="list-style-type: none"> <li>Office of Industrial Relations is responsible for handling disputes by reviewing the cases.</li> <li>If a claimant is not satisfied with the review decision by Office of the Industrial Relations, he or she can lodge an appeal against the decision with Queensland Industrial Relations Commission.</li> <li>If the case cannot be resolved, the claimant can seek the court's adjudication.</li> </ul>	<ul style="list-style-type: none"> <li>Industrial Accident Compensation Insurance examiner reviews and investigates the case if a claimant is not satisfied with the decision by Labour Standards Bureau.</li> <li>If the claimant is not satisfied with the decision by the examiner, he or she may apply for re-examination with Labor Insurance Appeal Committee.</li> <li>If the case cannot be resolved, the claimant can seek the court's adjudication.</li> </ul>

Table 4 – Work injury rehabilitation services in Hong Kong, Queensland and Japan

	Hong Kong	Queensland	Japan
<b>1. Rehabilitation services</b>			
<b>(a) Services provider</b>	<ul style="list-style-type: none"> <li>Some local private insurers</li> </ul>	<ul style="list-style-type: none"> <li>Employers</li> </ul>	<ul style="list-style-type: none"> <li>Rosai hospitals and other employees' compensation designated medical facilities</li> </ul>
<b>(b) Voluntary/mandatory</b>	<ul style="list-style-type: none"> <li>Voluntary for employees</li> </ul>	<ul style="list-style-type: none"> <li>Mandatory for both employers and employees</li> </ul>	<ul style="list-style-type: none"> <li>Voluntary for employees</li> </ul>
<b>(c) Services provided</b>	<ul style="list-style-type: none"> <li>Under the Voluntary Rehabilitation Programme, participating insurers would identify appropriate work injury cases, initiate contacts with the injured employees and invite them to join the programme.</li> </ul>	<ul style="list-style-type: none"> <li>Employers are required to appoint a rehabilitation and return to work coordinator to help arrange rehabilitation and return to work programmes.</li> <li>Employees are required to participate in the programme, and failing to do so might result suspension of entitlement to compensation.</li> </ul>	<ul style="list-style-type: none"> <li>Rehabilitation programmes are provided by rehabilitation specialists in Rosai hospitals or other employees' compensation designated medical facilities.</li> <li>After discharged from the hospital, the injured workers will be provided with home-visit rehabilitation before returning to work.</li> </ul>

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