Study on Administrative Bodies Involved in Resolving Labour Conflicts

—In Comparison Japan with Australia and the UK—[*]

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Abstract

As industrial structures are changing, the nature and the way of resolving each country's labour conflicts in the workplace is also changing. About 50 years ago in Japan, most conflicts in the workplace were resolved by labour unions. But now the number of collective labour disputes are much smaller, but on the other hand the number of individual labour conflicts is larger.

In this article, by comparing systems in Japan to those of Australia and the UK, I argue that there are insufficient coordination systems in Japan regarding the resolution of individual labour conflicts, especially by administrative bodies.

Namely, (1) The amount of advice and conciliation by administrative bodies involved in solving labour conflicts in Japan should be increased. (2) A rule for a compulsory conference by administrative bodies in Japan should be introduced. (3) Early conciliation systems by administrative bodies should be introduced in Japan.

Importantly, the Prefectural Labour Bureau of Japan should support more individual employees through these three points as industrial structures are changing.

Keywords : early conciliation, compulsory conference, workplace rights, individual worker, fairness at work.

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1. Introduction

Recently, collective labour-management relations have not worked sufficiently to resolve labour problems in Japan. The Dentsu Company's "overtime work hour death case" in December 2015 is a case symbolizing the issue. Also, the Dentsu case symbolizes the seriousness of the overtime work issue in Japan. This case coupled with the government's "Work Style Reform" has evolved into reform of overtime management, and reform of supervisory administrations. At last on April 6th, 2018, the Government presented the Work-Style Reform-Related Bills to the Diet and the Act on the arrangement of Related Acts to promote work Style Reform[1] was enacted on June 29th, 2018.

In the era of collective labour-management relations, labour problems in the workplace were corrected by a labour-management council before a problem became complicated. But recently many labour problems in the workplace remain unresolved. In the background of those circumstances, there is an increase of irregular workers, including dispatch workers, and a decrease of trade union membership density. Also, in recent years, personal performance and responsibility of outcomes have increased. As a result, the reconciliation function by collective labour-management relations is deteriorating. This structural problem symbolized by the Dentsu case is a common problem leading to increased bullying, abuse of authority and sexual harassment.

In this paper, from the viewpoint of ADR (alternative dispute resolutions), I will discuss administrative bodies involved in solving labour conflicts in the workplace in comparison to Australia, and the UK, in order to realize fairness at work in Japan. (In Australia, administrative bodies involved in labour problems get good results in non-enforcement efforts and in ADR efforts, and in the UK independent statutory bodies backed up by the courts are active in non-judicial efforts and gets good results.)

Firstly, through the problem of long overtime working hours in the workplace which is becoming social issue, I point out that actual practices in the workplace such as in-house adjustment or a conciliation by administrative agencies, is more effective. Secondly, I point out that protection by collective labour management relations has been weakened in recent years. As a result, individual labour management relations are diffused, and the number of non-protected workers has increased.

Finally, I argue that assistance like conciliation by administrative agencies, which is widely practiced in Australia and the UK, but is not widely practiced in Japan, is effective for protecting employees efficiently in the present workplace in Japan.

2. Identification of Problems

Besides long overtime working hour problems and labour condition problems, there are various individual labour problems occurring in the workplace, such as bullying, abuse of authority, sexual harassment, etc. However, a common feature of these diverse labour problems is not based on collective labour-management relations, but on the relationship between an individual employee and a company. It is not a collective relationship between a trade union and a company. A victim is not a group, but an individual worker. Given the problem of death from

[1] The Act on the arrangement of Related Acts to promote work Style Reform, Act No.71, 2018.

long overtime working hours like in the Dentsu case, the remedy is to figure out how to back up an individual when an injustice problem occurs in the workplace.

In other words, a new solution mechanism is necessary for an individual in order to resolve individual labour problems that are not sufficiently addressed in accordance with changes in the times.

2.1: Problems of Long Overtime Working Hours in Japan

Considering the problem of long overtime working hours in the workplace, it was usually handled by a permanent labour-management council, a labour department, or a shop steward. If there were signs of health complaints or health problems from employees, the problem was systematically resolved by the mechanism of collective labour-management relations. However, like the Dentsu case, in recent years, Section 36 of the Labour Standards Act and collective labour-management mechanisms are not functioning well, as compared to those in the era of the industrial society (pre-information society).

Looking at the situation of the "Section 36 Agreement"[2] (Table 1), the percentage of coverage of agreements is about 47% in business establishments with 9 or fewer people, so the percentage is less than half. In business establishments with less than 30 people, the percentage of agreements is about 50%. Similarly, looking at the situation of the "Section 36 Agreement" by type of industry (retail, restaurants, etc), the percentage is low at around 50%. The mechanism of the "Section 36 Agreement" has not spread to industries that seem to have many problems with long overtime working hours.

Table 1. Situation of Labour-Management Agreement (Section 36) as to "Overtime Work / Work on Holidays" by Size of the Business

persons	1-9	10--30	(1-30)	31-100	101-300	301-
Situation of labour-management agreement (%)	46.8	77.4	(52.5)	90.1	94.9	96.1

(source) Ministry of Health, Labour and Welfare," Survey on comprehensive actual conditions of working hours, 2013.

Table 2. Number of Employees by Size of Employment (non-agricultural, non-forestry sectors), 2012

Total	1～4	5～9	10～19	20～29	30～49	50～99	100～299	300～499	500～999	1000～	government agency	others
54,238	3,921	3,800	3,870	2,271	2,696	3,764	5,296	2,365	2,804	10,952	4,967	7,057
100.0	7.2	7.0	7.1	4.2	5.0	6.9	9.8	4.4	5.2	20.2	9.2	13.0
	7.2	14.2	21.4	25.6	30.5	37.5	47.2	51.6	56.8	77.0	86.1	99.1

(source) written by the author, based on the Annual Labor Force Survey, 2012.

In the past, fairness at work and labour-management equality were practiced by collective labour-management relations. In recent years, the practice of collective labour-management relations has been insufficient, so individuals are exposed to weak positions including long overtime working hour problems, without being aided and protected. A new practice or mechanism that can ensure labour-management equality is needed.

[2] The Fair Labour Standard Act, Act No.49, 1947.

2.2: Insufficient Coordinating Mechanism in Japan

1) Issue of Long Overtime Working Hour Problems

Looking at the ripple in society from long-time labour problems symbolized by the Dentsu case from the viewpoint of (1) “Social standards (including law) and normative mechanisms”, the amendment of Section 36 results in a reform of social standards and norms. This reform started with the decision of the Action Plan for the Realization of Work Style Reform by the Council for the Realization of Work Style Reform (2017.3.28.). Currently, Section 36 is insufficient to rectify firms with long overtime working hour problems, and is only meant to use minimal effort to help parties deal with their current situation, in regards to current laws and workplace norms. In order to be able to rectify firms with long overtime working hour problems, a drastic improvement by making new rules is necessary for within and outside of the organization. But the new clarification of the legal criteria of the ceiling control of long overtime working hours[3] is big progress, apart from the adequacy of degree.

However, in addition to reform (setting) of this legal standard, a further important point is (2) the “support mechanism of coordination (conciliation)”. Such organizations as cannot improve unfair practices cannot rectify unfairness or reconcile disputes, no matter how strict the standards become. According to the Nikkei public opinion survey (implemented in March 2017 with 943 respondents), which concerned the reform of the upper limit of long overtime working hours by law, looking at the response rate to the question of "Do you think actual long overtime working hours will actually decrease by regulating the upper limit of long overtime working hours by law?”:

A.1. “I think that long overtime working hours will decrease” was 24% (Table 3),

A.2. “I think that it will not change” was 65%,

A.3. “I think overtime hours will increase” was 6%,

A.4. “I do not know” was 5%.

The sum of A2 and A3 is 71 %. The result of the survey does not necessarily mean that the amendment of the law is effective.

Table 3. The Attitude Survey on Overtime Work Hours Restrictions

(n=943)

No.	Question	100 (%)
A.1.	Overtime hours will decrease.	24
A.2.	It won’t change.	65
A.3.	Overtime hours will increase.	6
A.4.	I do not know.	5

（source）written by the author, based on the survey conducted by Nikkei in March.

2) Not Enough Working Corrective Mechanisms in the Workplace

The unfairness problem in the workplace is not improved easily. Workplace culture affects employee's behavior. It is the reason why the unfairness problem in the workplace is not improved only by law. There are many cases where the problem arises again because a company could not step in to reform workplace norms (workplace culture). Namely, companies tend to justify the situation contrary to legal norms based on its workplace culture (workplace norms), and do not recognize the problem itself as "unfair".

[3] The Work-Style Reform-Related Bills

In such cases, no matter how many times a company change rules, as corporate culture is not corrected, the remediation mechanism does not operate as expected. If a company does not refresh the corporate culture which should be corrected, the results will be similar. In other words, even if a company removes the surface of the problem, the problem persists because the corporate culture does not change.

If a company cannot correct an injustice within the company, unfairness within the company will need to be rectified by the social system. About 50 years ago, unfairness within the company was corrected by collective labour-management relations.

However, as individualization of labour problems is progressing now, it is not easily able to cover the whole by "collective labour-management relations" alone.

3) Insufficient Coordination Mechanism Between an Individual Employee and Management

In general, there are two mechanisms, regardless of collective labour problems or individual labour problems, when we consider a correction. One is (1) "Mechanism of social standards and norms" and the other is (2) "Support mechanism of coordination (conciliation)".

These mechanisms complement each other and labour problems are resolved. When a collective labour problem happens in Japan, it is resolved by civil courts, employment tribunals, administrative organizations such as the Labour Relations Commission of the Independent Administrative Committee and the Prefectural Labour Committee, etc. which are based on the Trade Union Law, the Labour Relations Reconciliation Law, workplace norms, and collective norms, etc.

On the other hand, the number of individual labour problems are increasing[4]. When an individual labour problem happens, it is resolved by various organizations such as the the Prefectural Labour Bureau[5], and administrative organizations of prefectures and cities as practical organizations, based on the Civil Code, the Labour Standards Law, and the Act on Promoting the Resolution of Individual Labor-Related Disputes enforced in 2001[6], etc.

After the Industrial Revolution, three primary labour rights were established as industrial relations mechanisms for protecting workers of trade unions (collective labour-management relations). Like these, mechanisms (individual labour-management relations) for protecting individual workers should be developed.

In particular, (2) "Support mechanism of coordination" has not responded to the need of current individual labour-management relations. If an individual labour problem cannot be resolved within the enterprise, (2) "Support mechanism of coordination (conciliation)" from outside the company is necessary. The mechanism is not an enforcement procedure, but a mechanism to back up the correction function and reconciliation function between the parties. (Many actual problems occur even in meeting regulation criteria.)

In addition, it is important that an individual labour problem should be reconciled early before problems become serious. If a reconciliation mechanism within an organization does not function, or if it cannot be expected, help for them from outside a company is needed.

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[4] With collective labor disputes sharply decreasing, it became a matter of discussion that individual labor-management conflict coordination system is needed in the latter half of the 1990s, and as a result, the Act on Promoting the Resolution of Individual Labor-Related Disputes came to legislation in 2001 and the Labor Tribunal Act was established in 2004.

[5] The Japanese name in roman letters is "To Dou Fu Ken Roudou Kyoku".

[6] This law was established for the first time in order to settle individual labor disputes.

In order to realize fairness at work, it is necessary to establish a mechanism to conciliate individual labour problems which are increasing in the modern society. In particular, there is a need to improve (2) “Support mechanism of coordination (conciliation)”.

3. Mechanism of Remediation of Individual Labour Problems in Japan: Status and Characteristics of the Prefectural Labour Bureau, the Labour Standards Inspection Office

There are two major approaches to resolve individual labour problems in Japan. One is from the viewpoint of social standards and rules. For example, resolution of long overtime working hour problems by Section 36 of the labour Standards Act, which is based on social standards and rules. The second major approach is through a reconciliation mechanism for individual labour problems. For example, from outside of an enterprise, advice and conciliation services are currently provided by the the Prefectural Labour Bureau of Japan.

In recent times, the number of labour problem cases that trade unions resolve has decreased. On the other hand, the number of cases in which the parties could not conciliate because of lack of help from outside the company is increasing. Therefore, in Japan "the Act on Promoting the Resolution of Individual Labor-Related Disputes" passed the Diet in 2001, in response to the increase in individual labour disputes[7] in society. This act made it possible for the Prefectural Labour Bureau to conciliate individual labour disputes.

When I review individual labour dispute resolutions by administrative institutions internationally, I can point out three characteristics regarding conflict coordination with the Prefectural Labour Bureau of Japan. First of all, in Japan there is little advice and conciliation by the Prefectural Labour Bureau. Looking at the number of those in the fiscal year 2016, there were about 1,130,000 labour consultations, but the number of applications for advice/guidance was 8,976 (0.79%), and the number of applications for conciliation was only 5,123 (0.45 %) (Table 4).

For several years after the “Lehman shock”, consultation on “dismissal” was the largest number of consultations among civil labour counseling cases (247,302 in FY2009), but now it is in the third place with 36,760 cases, while "bullying and harassment" which was in the third place at that time, is ranked first with 70,917 cases. The contents of consultation in the workplace has changed greatly.

Table 4. Changes Numbers of Incidents of Labour Consultations, Advice/Guidance, and Conciliation (the Prefectural Labour Bureau)

	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	
Total number of labour consultations	1,130,234	1,109,454	1,067,210	1,050,042	1,033,047	1,034,936	1,130,741	100.0
(Number of consultations per ″labor force 1,000 persons″)	17.0	16.8	16.3	15.9	15.6	15.6	16.9	
(FY2010=100.0)	100.0	98.2	94.4	92.9	91.4	91.6	100.0	
Number of individual civil labour disputes	246,907	256,343	254,719	245,783	238,806	245,125	255,460	
(Number of individual civil labour disputes per ″labor force 1,000 persons″)	3.7	3.9	3.9	3.7	3.6	3.7	3.8	−
(FY2010=100.0)	100.0	103.8	103.2	99.5	96.7	99.3	103.5	
Number of advice/guidance offers received	7,692	9,590	10,363	10,024	9,471	8,925	8,976	0.79
(Number of advice/guidance offers received per ″labor force 1,000 persons″)	0.12	0.15	0.16	0.15	0.14	0.13	0.13	
(FY2010=100.0)	100.0	124.7	134.7	130.3	123.1	116.0	116.7	−
Number of applicatios for conciliation received	6,390	6,510	6,047	5,712	5,010	4,775	5,123	0.45
(Number of applicatios for conciliation received per ″labor force 1,000 persons″)	0.10	0.10	0.09	0.09	0.08	0.07	0.08	
(FY2010=100.0)	100.0	101.9	94.6	89.4	78.4	74.7	80.2	−
Labour Force (1,000 persons)	66,317.5	65,955.0	65,651.7	65,927.5	66,087.5	66,247.5	66,730.8	

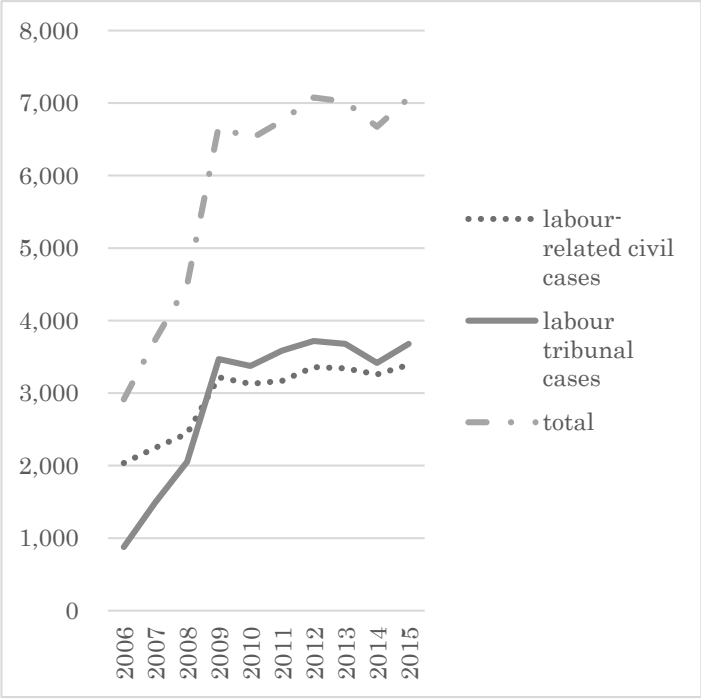
（source） written by the author, based on “The state of enforcement of Individual labor dispute resolution systems, 2016-17”(mhlw) and “OECD Data”.

[7] Noriaki Kojima, 1992, “Dispute Resolution (DR) in the Enterprise”, *Journal of labour law No.80: On the System to settle labour disputes,* Japan Labor Law Association.

Table 5. Changes of Numbers and Ratios by Settlement Categories of Labor Tribunal Cases

	2013		2014		2015	
Total	3,612	100.0	3,408	100.0	3,674	100.0
settled cases by conciliation.	2,528	70.0	2,314	67.9	2,497	68.0
settled cases on section 24.	159	4.4	150	4.4	193	5.3
withdrawal cases.	260	7.2	292	8.6	340	9.3
rejected cases,etc.	15	0.4	19	0.6	30	0.8
cases by labour tribunal judge	650	18.0	633	18.6	614	16.7

（source） written by the author, based on “the White Paper on Attorneys 2016” (JFBA).



（source） written by the author, based on “Trend of labour-related civil・administrative cases” *Lawyers Association journal,* The Supreme Court General Secretariat.

Fig. 1. Changes of Numbers of Civil Labour Suits and Petitions for Labour Tribunal Proceedings

The second point is that the amount of counseling has increased since the establishment of the system, but the amount of applications for conciliation has been on a downward trend since the fiscal year 2010 (Table4)

Furthermore, looking at the rate of application of advice offered and conciliation against the amount of individual labour dispute counseling on civil cases, the advice application rate peaked at 4.1% in the fiscal year 2012, but in the fiscal year 2016 it declined to 3.5% (Table 6).

The conciliation application rate has also declined to peak at 2.6% in the fiscal year 2010, and it was sluggish around 2.0% in the fiscal year 2016.

Table 6. Ratio of Advice/Guidance and Conciliation to Consultation

	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
ratio of advice/guidance offer	3.1%	3.7%	4.1%	4.1%	4.0%	3.6%	3.5%
ratio of application for conciliation	2.6%	2.5%	2.4%	2.3%	2.1%	1.9%	2.0%

（source） written by the author, based on “The state of enforcement of Individual labor dispute resolution systems, 2016-17”(mhlw).

The third point is that the cutoff rate (3,141 in the fiscal year 2015) was as high as 55.2% (Table 7). In particular, the discontinuance rate of cases due to the absence of opponents was as high as 37.0%.

The features of these three points are serious obstacles when the Prefectural Labour Bureau resolves or adjusts individual labour issues, so I feel the necessity of reforming the system in Japan. This point will be further discussed in comparison with Australia later.

Table 7. Status of Practice of Labor Tribunal Proceedings

	FY2013(B)		FY2014		FY2015(A)		(A) － (B)	
Total	4,679	100.0	5,045	100.0	5,688	100.0	1,009	(100.0)
before conciliation (A)	117	2.5	91	1.8	127	2.2	10	1.0
conciliation (B)	1,720	36.8	1,804	35.8	2,098	36.9	378	37.5
sub total(A)+(B)	1,837	39.3	1,895	37.6	2,225	39.1		
withdrawal	218	4.7	277	5.5	307	5.4	89	8.8
discontinuance (nonparticipation)(A)	1,677	35.8	1,934	38.3	2,102	37.0	425	42.1
discontinuance (others)(B)	942	20.1	916	18.2	1,039	18.3	97	9.6
sub total(A)+(B)	2,619	56.0	2,850	56.5	3,141	55.2		
the others	5	0.1	23	0.5	15	0.3	10	1.0

(source) written by the author, based on "The state of enforcement of Individual labor dispute resolution systems, 2016-17"(mhlw).

In addition, when I look at the characteristics of "declaration processing situation" of the Labour Standards Inspection Office (Table 8), I found the number of declared cases of individual conflicts was 26,280 cases (2015), so this number is larger than the amount of advice/conciliation given by the Prefectural Labour Bureau and other agencies.

Table 8. Status of Practice of Labor Standards Inspection Office (Report Inspection)

	2013	2014	2015
reports received	29,318	27,089	26,280
workplaces inspected	23,408	22,430	22,312
violated workplaces	17,323	16,321	15,782
violation ratio (%)	74.0	72.8	70.7

(source) written by the author, based on "Status of Practice of Labor Standards Inspection Office" *Labor Standards Inspection Administration*,2017,(mhlw).

It is a feature of the "practice of the Labour Standards Inspection Office" that the main category in the number of declared cases is the matter concerning non-payment of wages, rather than dismissal, bullying, harassment, etc. Looking at the year 2015, 22,362 cases (85.1%) were nonpayment of wages, and 4,017 (15.3%) were dismissals[8]. In Japan, the Prefectural Labour Bureau is very different from the Labour Standard Inspection Office in the way they support employees.

The Dentsu incident triggered the oversight of long overtime working hours, by implementing a new restriction under the law. But there are some problems in how to do it. This point will be discussed in comparison with the UK and Australia later.

[8] The number of cases is including duplicate cases.

4. The UK's New Trends; Comparison With ACAS

ACAS (Advisory, Conciliation and Arbitration Service)[9] was established in the UK by the Employment Protection Act 1975[10] as an independent statutory body in 1976. It provides conciliation, impartial advice and information for free to resolve workplace problems.

There are four features[11] of ACAS's service as follows: (1) ACAS uses "the code of practice"[12] flexibly[13]. (2) Conciliation by ACAS is respected[14] by ET (Employment Tribunal)[15]. (3) ACAS's conciliation is done according to the type of a labour dispute. (4) ACAS's conciliation must be done before ET. The "Conciliation First" Principle was prescribed by the Enterprise and Regulatory Reform Act 2013[16] (Section 7. "Conciliation before institution of proceedings", Section 8 and Section 9). By this Act, if an employee wants to make a claim to the Employment Tribunal, conciliation should be attempted by ACAS before a trial.

When I look at the number of complaints handled by ACAS in the fiscal year 2016, the National Helpline received 886,929 telephone calls. On the other hand, the Prefectural Labour Bureau of Japan received 1,130,741 cases, or 1.3 times the inquiries of ACAS (Table 9). But when I look at the size of the labour forces, the number of ACAS's labour consultations is 1.58 times, the number of ACAS's advice/guidance offers received is 20.6 times, and the number of ACAS's applications for conciliation received is 7.3 times, those of the Prefectural Labour Bureau of Japan.

It is clear that the Prefectural Labour Bureau's service (advice/guidance and conciliation, etc.) is fairly less used than ACAS of the UK (Table 9).

Table 9. Prefectural Labour Bureau Conciliation status in comparison with ACAS (FY 2016)

	FY2016		
	(A) Prefectual Labour Bureaus	(B) ACAS	conparison to the UK (B/A)
labour consultations	1,130,741	886,929	0.78
(per ″labor force 1,000 persons)	16.9	26.7	1.58
advice/guidance offers received	8,976	92,251	10.3
(per ″labor force 1,000 persons)	0.13	2.78	20.6
applicatios for conciliation received	5,123	18,647	3.6
(per ″labor force 1,000 persons)	0.08	0.56	7.3
Labour Force (1,000 persons)	66730.84	33227.02	0.50

(source) written by the author, based on *Implementation status of individual labor dispute resolution system in 2016-17*(MHLW) and *Advisory, Conciliation and Arbitration Service (Acas): Annual Report and Accounts 2016/17* and "OECD Data".

[9] Ryuich Yamakawa , 2007, *The report of Labour policy Study No.86: Middle Report of Research on the system of in-house conflicts, resolution*, the Japan Institute for Labour Policy and Training.
[10] The Employment Protection Act 1975 (Chapter 71).
[11] Masaharu Nose, 2011, "The Issue of Individual Labour Dispute Resolution Systems in Japan: Comparisons with the UK" *The Japanese Journal of Labour Studies: Background and Resolution System of Individual Labor, No/613*, the Japan Institute for Labour Policy and Training.
[12] It is a rule of employment practice, issed by ACAS, approved by Parliament and referred by ET.
[13] Shinobu Naito, 2009, "A Study of Code of Practice: The Function of Promoting Autonomous Action", JIL Discussion Paper 09−05, the Japan Institute for Labour Policy and Training.
[14] Section 207 (2) of Trade Union and Labour Relations (Consolidation) Act 1992: In any proceedings before an employment tribunal or the Central Arbitration Committee any Code of Practice issued under this Chapter by ACAS shall be admissible in evidence, and any provision of the Code which appears to the tribunal or Committee to be relevant to any question arising in the proceedings shall be taken into account in determining that question.
[15] Masaharu Nose, 2012, "Promotion of Individual Labour Dispute Resolution both inside and outside a company: Implication from ACAS and Survey of Workplace" *Journal of Japanese Arbitration and ADR*, Japan Association of the Law of Arbitration and Alternative Dispute Resolution.
[16] The Enterprise and Regulatory Reform Act 2013 (Chapter 24).

In the UK, in order to facilitate smooth handling of complaints in the workplace, the amendment of the Employment Act 2002[17], and the Employment Act 2002 (Dispute Resolution) Regulations 2004[18], were made. The procedures for resolving complaints before the amendment were complex to employees and employers, and there was dissatisfaction. The employment Act 2008[19] improved this complex procedure. At present, the procedure of the Code of Practice, which is not law, but based on the employment Act 2008, has promoted informal dispute resolutions.[20]

ACAS is an independent administrative corporation and different from private enterprises. This unique characteristic is the starting point for the UK's more flexible initiatives. On this point, Australia is different from the UK. The degree of involvement of administrative organizations (ex, Fair Work Ombudsman of Australia) is higher than it of the UK.

The point to be noted when comparing the status of conciliation of ACAS to Japan is the number of responses to complaints by ACAS is much larger than in Japan, and the number of resolutions is much larger as well. When I compared “early conciliation” (EC) of ACAS and “advice / guidance” of the Prefectural Labour Bureau of Japan to the number of cases, the number of EC cases was 92,110 (Table 10) and the amount of "advice / guidance” from the Prefectural Labour Bureau was 8,976 cases (only 9.7% of ACAS) (Table 9).

Also, when I look at the situation of resolution by ACAS (Table 10), there were 16,924 cases of EC (COT 3[21]: an agreement document), which is a ratio of 18.4% of all of the EC cases. The number of cases which didn’t proceed to the Employment Tribunal, but were settled beforehand, was 57,707 (62.7% of all the EC cases). (Table 10). The sum of these two ratios reached 81.1%, so the resolution rate was high.

On the other hand, the number of cases of settlement by conciliation by the Prefectural Labour Bureau of Japan was small at 2,003 cases (39.4％)(Table 11). The discontinuance was 2,847 cases (56.0％) and the withdrawal was 222 cases (4.4％). The number of cases to be handled and resolved by the Prefectural Labour Bureau was smaller. As a result, the ratio of non-resolution was 56.2% (Table 11), so the ratio of resolution wasn’t high.

Table 10. Final status of Early Conciliation Notifications

	Received, Jan 16–Dec 16, 2016	%
COT3 Settlement	16,924	18.4
Did not progress to tribunal claim	57,707	62.7
Dispute progressed to tribunal claim	17,479	19.0
Total	92,110	100.0

(source) written by the author, based on *Advisory, Conciliation and Arbitration Service (Acas) : Annual Report and Accounts 2016/17.*

Table 11. Prefectural Labour Bureau Conciliation Case Outcomes (FY 2016)

	FY2016	%
settled cases by conciliation.	2,003	39.4
withdrawal cases.	222	4.4
discontinuance	2,847	56.0
the others	11	0.2

(source) written by the author, based on *Advisory, Conciliation and Arbitration Service (Acas): Annual Report and Accounts 2016/17.*

[17] The Employment Act 2002 (Amendment of Schedules 3, 4 and 5) Order 2007 (No.30).
[18] The Employment Act 2002 (Dispute Resolution) Regulations 2004 (No.752).
[19] The employment Act 2008 (Chapter 24).
[20] Michael Gibbons, 2007, *Better Dispute Resolution: A review of employment dispute resolution in Great Britain*, Department of Trade and Industry.
[21] COT3 is an ACAS form on which an agreement is recorded as a legally-binding contract between the parties.

We should note that in the UK, ACAS resolved most conflicts in the workplace before going to Employment Tribunal. Specifically, the percentage of EC cases which proceeded to Employment Tribunal was only 19.0% of all, and about 80 % were resolved before Employment Tribunal (Table 10). When I look at 18,220 cases of Employment Tribunal applications[22] (ET 1), ACAS resolved 72.6% of them (Table 12). In the end, 25.9% cases of those proceeded to Employment Tribunal (Table 12).

It shows it is very important that conflicts at work should be conciliated before Employment Tribunal.[23]

Table 12. ET1 Conciliation Case Outcomes

	2016−17	%
(a) Struck out	1,020	5.6
(b) Settled	9,440	51.8
(c) Withdrawn	3,050	16.7
(d) Default judgment	574	3.2
(e) Heard	4,136	22.7
(f) Total	18,220	100.0
Resolution rate, (b+c)/(f−a)	−	72.6

(note) Resolution rates are calculated excluding cases struck out by the Tribunal since these are generally not susceptible to conciliation.
(source) written by the author, based on *Advisory, Conciliation and Arbitration Service (ACAS): Annual Report and Accounts 2016/17.*

5. Australia's Trends in Reconciliation and Resolution of Individual Labour Problems

Individual labour-management relations in Japan are expanding as described above, but this trend is similar internationally as well, and the background of it is a change in industrial structure and a decline in the trade union membership density rates, etc. Advancement and specialization of organizational activities are expanding individual labour-management relations. These structural changes need a new way to resolve labour problems. The new way is based on a change from a collective labour-management system to an individual labour-management system.

In Australia "collective labour-management relations" were the main mechanism of relations between employees and enterprises until the 1980s. But in the 1990s, collective labour-management relations became weaker in the time of the Conservative Party and the Liberal's coalition government.

However, the excessive decentralization of industrial relations invited strong criticism, especially against the Australian Workplace Agreements (AWAs). In December 2007, criticism for the Howard administration during the general election became very strong, and the Labour government won the victory. Individualization of industrial relations without protection for labour came to be rectified.

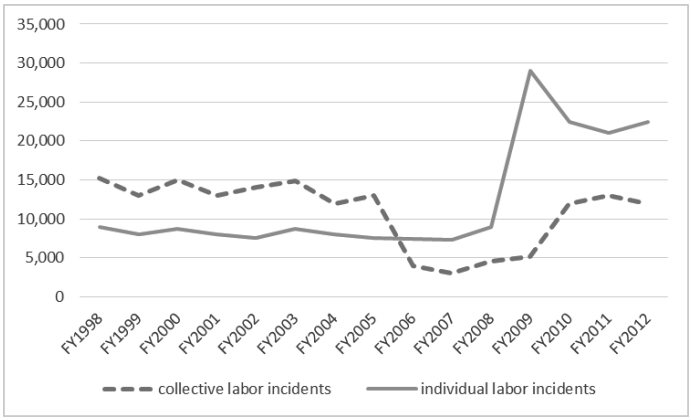
The important point is that the Fair Work Act 2009[24] by the Labour government did not simply return to the old days, but created new concepts of "workplace rights". It is important that workplace rights are not based only on collective relations, but are based on both sides of collective and individual labour-management relations to protect employees.

[22] ET1 is an Employment Tribunal form of an application to resolve Employment Tribunal claims.
[23] Masaharu Nose, 2015, "Implication from the UK Individual Labour Dispute Resolution: A UK-Japan Comparative Study" *School of Sociology Journal, 121,* KwanseiGakuin University.
[24] The Fair Work Act, No.28, 2009,Cth.

According to the annual report of the Fair Work Commission (Our Future Direction) (2012-13, p.8, 15), in comparison of the number of individual labour cases since 1998 to the number of collective labour cases, current employee-enterprise relations are pointed out to be "an era in which individual labour incidents are central".

In other words, even though the number of collective labour cases had drastically decreased in the fiscal year 1998 to the fiscal year 2005 (the Workplace Relations Act[25] era), the number of collective labour cases was still larger than individual labour cases. But from the fiscal year 2006 to the fiscal year 2008 (during the work Choices Act[26] era, the era of AWAs), the number of individual labour cases came to exceed collective cases, and in the fiscal year 2009 and beyond (Fair Work Act era), the number of individual labour cases has become much larger than collective labour cases. (Fig. 2).

In addition to FWC, organizations that promote reconciliation and resolution of individual labour problems in the workplace based on the Fair Work Act 2009 are: the Fair Work Ombudsman (FWO), the Australian Human Right Commission (AHRC), and others. In the next section, I will discuss how each organization in Australia responds in the era where individual labour cases are central.



(source) written by the author, based on *ANNUAL REPORT 2012–13 : OUR FUTURE DIRECTION,* FWC.

Fig.2. Comparison of Trends in the Number of Collective and Individual Labor Incidents in Australia.

6. Organizations Involved in Resolving Labour Conflicts in Australia and Situation

In Japan, regarding the Act on Promoting the Resolution of Individual Labor-Related Disputes[27], which took effect in 2001, the Prefectural Labour Bureau is supposed to play a major role as an administrative agency[28]. In Australia, there are Australia's judicial and administrative organizations including the Fair Work Commission (FWC), the Fair Work Ombudsman (FWO), the Australia Human Rights Commission (AHRA), and at the state level, for example, the Victorian Civil & Administrative Tribunal (VCAT).In Japan as well, advice, encouragement, and mediation are effective ways to coordinate labour conflict resolutions, but as mentioned above, the degree of utilization of administrative ADR such as the Prefectural Labour Bureau is low. There is a

[25] The Workplace Relations Act 1996, Act No.86, Cth.
[26] The Workplace Relations Amendment (Work Choices) Act 2005, Act No.153, Cth.
[27] The Act on Promoting the Resolution of Individual Labor-Related Disputes, Act No.112, 2001.
[28] In addition, there are conciliation by the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment and the Gender Equality Dispute Resolution Committee of Toyonaka City, etc.

problem in Japan in the realization of fairness at work by conciliation of administrative bodies. I will examine the concrete approach to resolving labour problems in Australia as follows.

6.1: The Fair Work Commission

FWC is a national workplace relations tribunal which was founded as Fair Work Australia (FWA). It became the current Fair Work Commission (FWC) on January 1, 2013[29] by the Fair Work Act (Fair work Act 2009) which was approved in March 2009 and took effect in July of that year. FWA inherited the function of the Australian Industrial Relations Commission (AIRC).

Major functions and authorities of FWC are: (1) setting of some labour standards such as minimum wage, etc. (2) promotion of labour-management negotiations by company, (3) correspondence to unfair dismissals, (4) coordination and resolution of individual/collective labour issues by advice, conciliation, mediation and hearing, and (5) response to labour disputes.

In particular, looking at the specific efforts of the individual labour issues in (3) and (4) above in regard to unfair dismissal (Table 13), the resolution rate by FWC conciliation and mediation is around 90%. The proportion proceeding to trial, etc. was only around 10%. Conciliation and mediation are functioning extremely efficiently.

Table 13. Status of Conciliation by FWC as to Unfair Dismissal

	2012−13		2013−14		2014−15		2015−16	
before conciliation (person, %)	2,300	16.5	2,273	15.5	2,156	14.2	2,130	14.2
(per "labor force 1,000 persons)	0.2	−	0.2	−	0.2	−	0.2	−
conciliation	8,843	63.4	8,659	59.1	8,788	57.9	8,529	56.8
(per "labor force 1,000 persons)	0.7	−	0.7	−	0.7	−	0.7	−
after conciliation	2,093	15.0	2,475	16.9	2,654	17.5	2,808	18.7
(per "labor force 1,000 persons)	0.2	−	0.2	−	0.2	−	0.2	−
sub total	13,237	94.9	13,408	91.5	13,599	89.6	13,468	89.6
(per "labor force 1,000 persons)	1.1	−	1.1	−	1.1	−	1.1	−
after conferrence	49	0.4	41	0.3	52	0.3	104	0.7
(per "labor force 1,000 persons)	0.004	−	0.003	−	0.004	−	0.008	−
adjudication by labour tribunals	660	4.7	1,200	8.2	1,527	10.1	1,457	9.7
(per "labor force 1,000 persons)	0.055	−	0.099	−	0.124	−	0.116	−
Total	13,945	100.0	14,648	100.0	15,177	100.0	15,028	100.0
Labour Force (1,000 persons)	11,982.44	−	12,157.97	−	12,294.61	−	12,540.34	−

(source) written by the author, based on *ANNUAL REPORT 2012, 2013, 2014, 2015,* (FWC) and "OECD Data".

One of the reasons for enabling this efficient procedure is to force parties to attend at the time of conciliation by the Fair Work Act 2009: Section 592 (1) "Legal consultation (conference)". Therefore, unlike conciliation by the Prefectural Labour Bureau of Japan based on the Act on Promoting the Resolution of Individual Labor-Related Disputes, the opponent should participate in conciliation. This leads to a high resolution rate by the FWC and reduces the proportion of cases going to judgement by FWC (about 10%).

Looking at individual cases of resolution by the Labour Tribunal System of Japan[30], which is not an administrative system, but a judicial system, success rate of conciliation was as high as 68%, and the ratio going

[29] The Fair Work Amendment Act 2012, Act No.174, Cth.
[30] Takashi Shimoi, 2008, "The resolution of Individual Labour Disputes: From the viewpoints of my experience of a coordination committee, *Journal of labour law No.112*, Japan Labor Law Association.

to court was as low as 16.7% in 2015, so most cases were resolved by agreement between the parties beforehand. The resolution rate before trials was high[31].

Looking at the overview of all cases including collective labour-management disputes (Table 14), there were about 35,000 applications in the fiscal year 2015, and after application to FWC, approximately 50% were resolved (which is high), and final judgment by tribunal etc. was around 35%.

Table 14. Status of Conciliation of All Cases by FWC

	2012–13			2013–14			2014–15			2015–16		
application received	36,616	100.0 (%)		37,066	100.0		34,152	100.0		34,215	100.0	
(per ″labor force 1,000 persons)	3.06			3.05			2.78			2.73		
before conciliation,withdrowal	17,625	48.1		17,446	47.1		14,230	41.7		17,532	51.2	
(per ″labor force 1,000 persons)	1.47			1.43			1.16			1.40		
FWC(hearing/conference) FW Act s.397,s.398	18,991	51.9	100.0 (%)	19,620	52.9	100.0	19,922	58.3	100.0	16,683	48.8	100.0
(per ″labor force 1,000 persons)	1.58			1.61			1.62			1.33		
after conciliation,withdrowal	7,318	20.0	38.5	6,318	17.0	33.3	7,482	21.9	39.4	4,543	13.3	23.9
(per ″labor force 1,000 persons)	0.61											
adjudication by labour tribunals	11,673	31.9	61.5	13,302	35.9	67.8	12,440	36.4	62.4	12,140	35.5	72.8
(per ″labor force 1,000 persons)	0.97			1.09			1.01			0.97		
Labour Force (1,000 persons)	11,982.44			12,157.97			12,294.61			12,540.34		

(source) written by the author, based on *ANNUAL REPORT 2012, 2013, 2014, 2015,* (FWC) and “OECD Data”.

6.2: The Fair Work Ombudsman

The Fair Work Ombudsman (FWO) is also an organization based on the Fair Work Act 2009, which is a federal law that was approved in March 2009. FWO provides necessary advice and guidance, etc. concerning the FWC's orders, rulings, and registered workplace agreements.

In practice, FWO can appoint a Fair Work Inspector and conduct on-going surveys to resolve labour problems. If necessary, corrections are made to the parties by mediation, notification of problems by a Findings Letter, notification of warning by a Letter of Caution, notice of violation by Infringement Notice, or announcement of compliance by Compliance Notice. One of the features of FWO is that voluntary resolutions among the parties are respected from a viewpoint which is different from supervisory positions, and another feature is that advice is given and conciliation begins at an earlier stage.

Even if it meets the standards of laws and regulations, there are many cases which have actual problems in the workplace. FWO can deal with such problems as well. Also, even though coordination between the parties could fail, FWO can monitor and supervise them. Therefore the parties cannot help but tackle problems seriously.

In addition, FWO is actively working on the mission of providing information. Through websites, social media, publications, and consultations, it prevents labour conflicts.

Recently there has been a tendency away from information provision by telephone. Responses to online inquiries are 1.72 times higher than the previous year. Looking at 29,940 complaints filed in the fiscal year 2015 by activity category (Table 15), about 34% of them were solved with "early intervention" efforts, which demonstrates the importance of dealing with problems before the problem worsens. About 40% were solved, helping the persons concerned not by enforcement, but by education and advice. In other words, we should be aware that about 75% of cases in these two categories were resolved. In addition, it is necessary to pay attention to the fact that resolution by conciliation as a solution method was around 15% (about 4,500 in the fiscal year

[31] Shigeru Haruna, 2010, "Current status and problems of the Labor Tribunal System" Jurist: Special Feature: Actual and Legal Treatment of the Individual Labor Dispute, No.1408, Yuhikaku. The Labour Tribunal System is thought highly. I also think highly of the actual performance of the labor tribunal system.

2015)[32], which was rising compared to 10.7% in the fiscal year 2012 (Table 16). Meanwhile, in so-called enforcement activities (FWO's compliance activities), preliminary checks or audit activities resolved about 20% of all. In addition, it is only about 6% that led to the category of compulsory procedure (enforcement procedure), which is an effort towards enforcement, and it is necessary to keep in mind that resolution is attempted before the enforcement procedure stage.

Table 15. Status of Enforcement Activities of FWO by Category (FY2015)

	number	(%)
early intervention	10,250	34.2
(per ″labor force 1,000 persons)	0.82	
education and dispute resolution services	11,930	39.8
(per ″labor force 1,000 persons)	0.95	
enforcement action	1,740	5.8
(per ″labor force 1,000 persons)	0.14	
compliance	6,020	20.1
(per ″labor force 1,000 persons)	0.48	
total	29,940	100.0
(per ″labor force 1,000 persons)	2.39	
Labour Force (1,000 persons)	12,540.34	

(source) written by the author, based on *ANNUAL REPORT 2015-16,* FWC and "OECD Data".

In addition, looking at the status of initiatives in the fiscal year 2012 (Table 16), the number of consultations was about 616,000, about 4% (about 25,000) of them were filed as complaints. The resolution rate by conciliation was as high as about 82%.

Table 16. Status of Conciliation by FWO in FY 2012

	number	ratio 1	ratio 2	ratio 3
consultation	615,905	—	—	100.0%
(per ″labor force 1,000 persons)	51.40			
complaints received	24,678	_	100.0%	4.0%
(per ″labor force 1,000 persons)	2.06			
conciliation	3,208	100.0%	13.0%	—
(per ″labor force 1,000 persons)	0.27			
resolved by conciliation	2,631	82.0%	10.7%	_
(per ″labor force 1,000 persons)	0.22			
complaints finalised	26,574		107.7%	_
(per ″labor force 1,000 persons)	2.22	—		
Labour Force (1,000 persons)	11,982.44	–		

(note) Since it includes processing of cases received in the previous year, the number of resolutions in the current fiscal year exceeded the number of cases received.

(source) written by the author, based on *ANNUAL REPORT 2012-13*,(FWO) and "OECD Data".

Though the FWO has supervisory authority, labour problems are not necessarily resolved by crackdown (enforcement procedure). In many cases, they are effectively resolved by "early response" and "education and advice". The point is that problems which cannot be resolved by laws and regulations are effectively resolved by conciliation. In Japan, the Labour Standards Inspection Office practices only the inspection (supervision) work. Advice / conciliation of labour problems are practiced by the Prefectural Labour Bureau. As continuation of employment is one of the characteristics of labour problems, it is important to deal with labour problems at an

[32] FWO, 2016, *Annual Report 2015-16.*

early stage in order to practice effective administrative services, and it is necessary to introduce a new mechanism to realize it.

At the time of legislation of the Act on Promoting the Resolution of Individual Labor-Related Disputes, the institutional design of which organization is responsible for coordination of individual labour dispute treatments was discussed. One of the arguments was whether it would be good or not that crackdown institutions such as the police or the Labour Inspector Office would participate in conciliation.

Today, as we have accumulated many cases of individual labour conflicts, such concerns that enforcement institutions like the Labour Standards Inspection Office would force their opinions on involved persons, have been eliminated. I think that it is time to rethink the present system.

The FWO has a number of consultation cases (about 620,000 cases in in the fiscal year 2012) (Table 16) and carries out extensive efforts (29,940 in the fiscal year 2015) (Table 15) including early intervention, education, guidance and mediation etc. The solution rate is also high. It is necessary to pay attention to the point that FWO can practice both supervisory work and advice/conciliation initiatives without contradiction.

6.3: The Australian Human Rights Commission

The Australian Human Rights Commission was established in 1986 by the Australian Human Rights Commission Act 1986[33] as the Human Rights and the Equal Opportunity Commission (HREOC). In September of 2009, in order to clarify efforts from the viewpoint of human rights, which is a higher level concept including equality of opportunities, and to avoid confusion with each state's equal opportunity committee, the name of HREOC was renamed the Australian Human Rights Commission.

Specifically, it conducts coordination and resolution of disputes and conflicts, such as human rights violations and labour issues in the workplace. Other efforts are conducting surveys related to human rights issues and providing information through websites[34].

Table 17. Number of Complaints Received and Finalized

Number of Complaints Received and Finalised					
	FY2010	FY2011	FY2012	FY2013	FY2014
complaint received	2,152	2,610	2,177	2,223	2,388
(per ″labor force 1,000 persons)	0.19	0.22	0.18	0.18	0.19
complaint finalised	2,266	2,605	2,500	2,178	2,251
(per ″labor force 1,000 persons)	0.19	0.22	0.21	0.18	0.18
Labour Force (1,000 persons)	11626.50	11816.00	11982.44	12157.97	12294.61

(note) Since it includes processing of cases received in the previous year, the number of resolutions in the current fiscal year exceeded the number of cases received.

(source) written by the author, based on *ANNUAL REPORT 2014-15*,(AHRC) and “OECD Data”.

Looking at the processing situation of actual complaints (Table 17), the number of new complaints received has been from about 2,100 to 2,400, which is around 12% of the consultation number. In addition, although the number of initiatives by conciliation was 47% in the fiscal year 2010, in the fiscal year 2014 it increased to 51% (Table 18). The importance of conciliation is growing.

[33] The Australian Human Rights Commission Act 1986, Act No.125, Cth.

[34] There were 176,670 accesses to the site on complaints, where information on law and grievance procedure is provided.

Table 18. Outcomes of Complaints Finalized by AHRC

					(%)
	FY2010	FY2011	FY2012	FY2013	FY2014
(1) ratio of grievances finalized before conciliation	35	31	33	23	23
(2) ratio of conciliation	47	48	45	49	51
(3) ratio of grievances finalized by conciliation(A)	30	32	29	34	37
(4) ratio of withdrowal (B)	11	12	13	16	16
(A)+(B)	41	44	42	50	53
(5)ratio of discontinuance	6	8	9	9	9
(6)others	1	1	−	3	1
(1+2+4+5+6)	100	100	100	100	100

(source) written by the author, based on *ANNUAL REPORT 2014-15*,(AHRC).

Also, looking at the resolution rate of conciliation (Table 19), the rate of resolution increased to 76%[35] in the fiscal year 2015, which was 64% in the fiscal year 2010.

Complaints will be withdrawn by the understanding of the complaints through conciliation, and a consensus will also be formed by discussion between the parties. The withdrawal rate has risen from 11% in the fiscal year 2010 to 16% in the fiscal year 2014 (Table 18).

Table 19. Complaints Resolved by Conciliation over the Past Five Years

						(%)
	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015
Complaints successfully resolved	64	66	65	70	72	76
Complaints unable to be resolved	36	34	35	30	28	24

(source) ANNUAL REPORT 2014-2015

Unlike conflict coordination by the Prefectural Labour Bureau of Japan, which has a high discontinuation rate, the parties in Australia are forced to participate in conferences (Australian Human Rights Commission Act 1986: Section 46PJ). Therefore, the discontinuation rate is much lower than in Japan. This mechanism can greatly contribute to resolving labour conflicts.

Regarding information provision initiatives, information provision using websites has been growing year by year, and media by publication is on a downward trend. The information provision function in consultations is progressing more efficiently by using the websites.

6.4: The Victorian Civil & Administrative Tribunal

Not only efforts at the national level, but also efforts in each state are important. Here I consider the Victorian Civil & Administrative Tribunal (VCAT) in Victoria. VCAT is a state judicial body which was established in 1998 by the Victorian Civil and Administrative Tribunal Act[36]. Even though it is a judicial institution, a lawyer is not always needed at the time of filing a suit. As a tribunal which citizens can use easily without requiring legal experts, VCAT regards an informal approach as important in order to resolve conflicts.

If a complainant wants to resolve an issue by consensus between the parties, rather than by authoritative judgement, a complainant can choose mediation, compulsory conference, etc. Both are efforts by discussion between the parties, but the compulsory conference greatly differs from mediation in that the opponent is obliged

[35] Third- fourth of conciliation cases are resolved by conciliation.
[36] The Victorian Civil and Administrative Tribunal Act, Act No.53, 1998, Vic.

to participate in the discussion. In the case of non-participation, the absent side is likely to be at a disadvantage. If consultation fails, the case will proceed to a hearing, which is the next stage to resolve conflicts.

In conflict coordination with the Prefectural Labour Bureau of Japan, there is no obligation for the other party to participate in the consultation, and if the other party does not participate, dispute procedures are discontinued.

Table 20. Trend of Number of Cases Finalized by Conference and Mediation

	FY2013		FY2014		FY2015	
cases received as to equal employment opportunity	301 100.0	–	316 100.0	–	271 100.0	–
cases received of conference/mediation	94 31.2%	100.0%	141 44.6%	100.0%	109 40.2%	100.0%
conferrence	42	100.0%	74	100.0%	75	100.0%
mediation	52	100.0%	67	100.0%	34	100.0%
cases finalised	48	51.1%	83	58.9%	62	56.9%
conferrence	23	54.8%	43	58.1%	47	62.7%
mediation	25	48.1%	40	59.7%	15	44.1%

(source) written by the author based on *ANNUAL REPORT 2015-16*, VCAT.

Specifically, when I look at the situation of efforts under the agreement between the parties in the field of equal opportunity at VCAT, the percentage of newly received cases was about 40.2% (FY2015) (Table 20). 56.9% of those were solved by discussion procedure (mediation/compulsory conferences).

In addition, about 75% of all cases were solved in a series of processes after the procedure of compulsory conference and mediation (Table 21).

About three quarters of all were resolved by discussion procedure, so the conciliation rate was high. As a result, the ratio to the hearing in the final stage was low at 6.0% (FY2014). This means that in order to resolve labour problems, conciliation (mediation) is important between the parties.

Table 21. Status of Numbers Finalized by Conference/Mediation Received

	conferrence				mediation			
	FY2013		FY2014		FY2013		FY2014	
received	42	100.0	74	100.0	52	100.0	67	100.0
finalised by conference/mediation	23	54.8%	43	58.1%	25	48.1%	40	59.7%
finalised after conference/mediation before hearing	7	16.7%	14	18.9%	15	28.8%	8	11.9%
sub total	30	71.4%	57	77.0%	40	76.9%	48	71.6%
conference/mediation continueing	1	2.4%	2	2.7%	0	0.0%	2	3.0%
cases after conference/mediation before hearing	10	23.8%	10	13.5%	9	17.3%	13	19.4%
hearing	1	2.4%	5	6.8%	3	5.8%	4	6.0%

(source) written by the author based on *ANNUAL REPORT 2015-16* , VCAT.

6.5: Comparison of Prefectural Labour Bureau with FWO and FWC

The number of corrected and conciliated cases in Japan by the Prefectural Labour Bureau and District Courts (including the Labour Tribunal System) was smaller than in Australia in 2015. In Australia there were 2.39 cases/thousand persons of labour force of 29,940 cases (FWO) (table 15), and 2.73 cases/thousand persons of labour force of 34,215 cases (FWC) (table 14), with a total of 5.12 cases/thousand persons of labour force of 64,155 cases.

On the other hand, in Japan in 2015 there were 0.05 cases/thousand persons of labour force of 3,390 cases[37] (new field civil cases), 0.06 cases/thousand persons of labour force of 3,679 cases (new labour trial cases), 0.13 cases/thousand persons of labour force of 8,925 cases (applications for the Prefectural Labour Bureau's advice and guidance) (table 4), 0.07 cases/thousand persons of labour force of 4,775 cases (applications for conciliation) (table 4), and 0.40 cases/thousand persons of labour force of 26,280 cases (declaration supervision by the Labor Standards Inspection Office) (table 8), with a total of 0.71 cases/thousand persons of labour force of 47,049 cases. In comparison to the 64,155 cases of Australia, Japan covered less cases.

In Australia, in the two organizations, FWO and FWC, the number of cases covered is 7.2 times larger (per thousand persons of labour force) than in Japan, justice in the workplace is more successful than in Japan. In particular, when comparing each, except in the case of compliance and enforcement action, I find Australia (4.5 cases/thousand persons of labour force of 56,395 cases (table 15) is covering 14.5 times more than Japan (0.31 cases/thousand persons of labour force of 20,769 cases). In order to realize fairness at work, it is essential not only to crackdown on infringements, but also to carry out effective conciliation. It is necessary to raise the rate of conciliation. The Prefectural Labour Bureau's service (advice/guidance and conciliation, etc.) of Japan is fairly less utilized than that of Australia.

7. Conclusion: Implication From Australia and the UK

The practice of fairness at work including the remedy of long overtime working was pre-adjusted by collective labour-management relations (for example, by labour-management councils) in the era of the industrial society. But recently, due to a decline in trade union membership density rates and an increase in irregular workers such as dispatch workers, the ability to resolve conflicts by conventional collective labour-management relations has declined. As a result, problems such as suicide due to long overtime working hours and individual labour problems are increasing.

Currently, in Japan there are various organizations which resolve labour problems in the workplace. For example, the Prefectural Labour Bureau (efforts based on the Act on Promoting the Resolution of Individual Labor-Related Disputes), the Labour Standards Inspection Office, and courts (efforts based on the labour tribunal systems, and ordinary civil trials).

But in order to realize fairness at work, it is necessary to build a new mechanism in Japan. I would like to point out the following three points especially in comparison to Australia and the UK (ACAS) mentioned above.

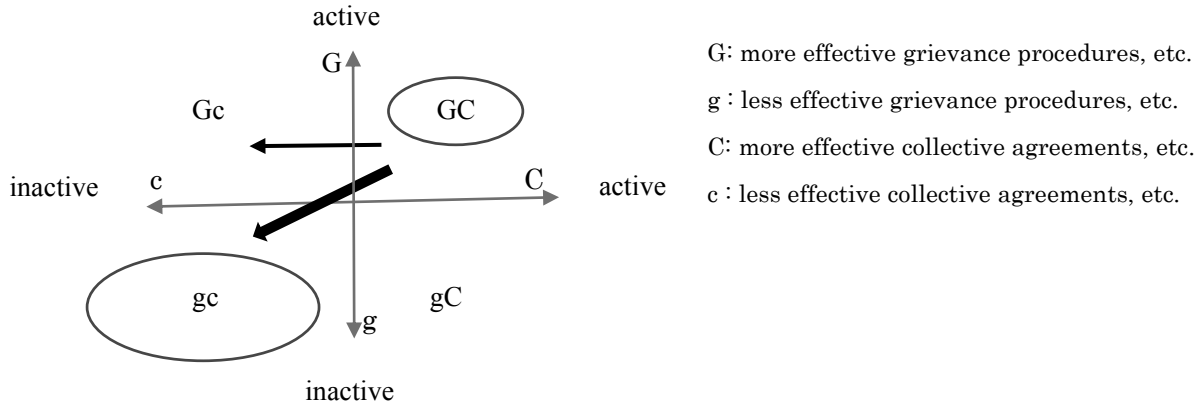
7.1: Necessity to Increase Coverage Ratio by the Prefectural Labour Bureau's service

One of the problems pointed out at the beginning of this article was that workers who had been widely protected by collective labour-management relations in the era of the industrial society have been becoming unprotected as individualization progresses.

These increasing worker groups ("gc" worker group) are shown in Fig 3. ("G" means more effective grievance procedures, etc., "g" means less effective grievance procedures, etc., "C" means more effective collective agreements, etc., and "c" means less effective collective agreements, etc.)

[37] According to the Supreme Court. (p14, https://www.mhlw.go.jp/file/04-Houdouhappyou-11201250-Roudoukijunkyoku-Roudoujoukenseisakuka/0000167799.pdf)

Initially, the “GC” worker group had been protected by the collective labour-management relations system. But they became “gc” group workers who are no longer backed up, and there was an increase in the number of disputes of individual labour relations. This trend, including in Australia, is a rapid change from collective labour-management relations to individual labour-management relations. As mentioned above, FWO and FWC etc. protect workers in response to this change.



(source) written by the auther.

Fig. 3. Change of Protection of Labours by Collective Agreements and Grievance Procedures

Workers with no labour union or labour union representative, or situations where worker protection systems and mechanisms are not well worked into the enterprise, are increasing with recent social changes. This issue is common in the world.

There are many consultations and complaints of individual labour issues in Japan as well. The number of inquiries in Japan is over 1,000,000/year. There are many potential cases that need to be rectified and conciliated by administrative organizations. In comparison, ACAS in the UK has about 950,000 inquiries per year, and FWO etc. in Australia have about 650,000 inquiries per year.

But the Prefectural Labour Bureau's service (advice/guidance and conciliation, etc.) is fairly less used than in both Australia and UK as I mentioned. As a whole, the proportion of actual corrected/conciliated labour counseling cases by the Prefectural Labour Bureau is not high. To realize fairness at work, the Prefectural Labour Bureau must firstly increase the rate of advice/guidance and conciliation by increasing the number of actual corrections and adjustments to the complaints.

7.2: Necessity of Compulsion of Participation in Conciliation at the Prefectural Labour Bureau and Backup by the Court

Since conciliation by the Prefectural Labour Bureau of Japan is voluntary, and participation of the parties is also voluntary, the procedure of conciliation will be discontinued in the case of refusal by either party to take part. But looking at conciliations by AHRC and FWC in Australia, participation in “conferences by AHRC” is promoted by enforcement with a penalty to the absent parties, etc., and participation in “conferences by FWC” is also promoted by Section 592 of the Fair Work Act 2009 which stipulates that both parties should attend at the time of conciliation. At the result of it, the rate of discontinuance of conciliation decreases.

In the UK, ACAS plays a new role by the Enterprise and Regulatory Reform Act 2013, which stipulates that the persons concerned (parties) should be conciliated by ACAS before filing a suit with the Employment Tribunal (ET), and not only that ET only respects the conciliation process of ACAS. ACAS's role in resolving individual labour disputes became more important. This means that the function of ADR by administrative bodies became more important with an increase in the number of individual labour dispute in the UK.

Institutionally speaking, if it is a system in which parties at a disadvantage do not need to participate in conciliation, generally they will not participate. On the other hand, if the parties must participate, or if it is disadvantageous not to participate, parties at a disadvantage will also participate in conciliation to make efforts for an agreement. In Japan, the number of inquiries to the Prefectural Labour Bureau is increasing, but the amount of advice/mediation etc. has been stagnant. One of the reasons for this is discontinuance of conciliation, and it is necessary to have a rule that forces parties to take part in conciliation.

In Japan it is necessary to put practices in effect, like Australia and the UK. Such mechanisms that force participation in conciliation in order to raise participation rates in conciliation are firstly needed by the Prefectural Labour Bureau. Secondly, the mechanism that the labour tribunal systems of Japan respects the Prefectural Labour Bureau's conciliation process is needed.

7.3: Necessity of Practice of Early Conciliation

Regarding how to practice fairness in the workplace in Japan, measures to be taken by enforcement are also necessary, but FWO and FWC are engaging in efforts that respect early intervention for resolving conflicts.

Indeed, when I look at FWO's efforts in the fiscal year 2015, early conciliations like efforts of ACAS brought good results, with 34% of "complaints received" settled by early conciliation. (The UK has already introduced an early conciliation system and the settlement ratio by early conciliation is also high as mentioned above.)

In Japan as well, advice and conciliation are necessary at early stages to resolve workplace problems effectively. In addition, educational awareness activities are indispensable for early solutions. As for FWO, AHRC, FWC and VCAT, they utilize the internet and a social media to do educational awareness activities, and publish results as data.

When I consider mechanisms of administrative bodies involved in resolving conflicts in the workplace, and realizing fairness at work in Japan, first of all, Japan should establish a mechanism based on the three points that I pointed out above.

Efforts to realize fairness at work are not limited to long overtime working hour problems. Problems of bullying, sexual harassment and abuse of authority etc. are increasing recently as well.

Along with the development of the modern society, three rights of workers have been formed as social rights. Being based on the three rights of work, the practical mechanism of industrial relations has also developed as collective labour-management relations, to protect workers in an industrial society. But recently this system (collective labour-management relations) has not come to be able to protect workers. If employees cannot expect collective labour-management relations and self-correcting mechanisms within the organization, they will need help from administrative bodies, etc.

As I pointed out, without establishing a mechanism based on the three points, administrative bodies involved in resolving labour conflicts in Japan can't protect employees in the present workplace efficiently, nor realize fairness at work.

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