

## FUTURE ECONOMIC LOSS DAMAGES

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ASIEQ Meeting

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### General principles

- Return the Claimant to their pre injury position as far as is possible by monetary award
- Calculated precisely, globally or a combination
- Damages for future economic loss compensates the capacity to earn an income, not necessarily the actual loss of wages
- Global award may be made for disadvantage, even if no actual loss of income

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- Factors to take into account – age, occupation, work history, extensive restrictions, time out of work, likelihood of recovery, sympathetic employer, qualifications, pre existing conditions, individual circumstances – mortgage, reason to work, superannuation balance

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**Precise calculation**

• *Hughes v Tuckerby Engineering Pty Ltd*  
*[2011]QSC256*

- Claimant works in the mining industry
- Elbow injury
- Evidence the given Claimant would not pass the next Coal Board Medical
- Evidence of average retirement age in industry (age 60)
- Not accepted the Claimant would have worked to age 67 if not injured



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- Loss calculated at \$1,188 net per week (being the difference between previous earnings and residual earning capacity) until age 60 only, with a 30% discount for contingencies, then for a further 5 years to age 65 with a 90% discount for contingencies



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**Global amounts**

• *Perfect v MacDonald* [2012]QSC11

- Plaintiff 14 years old
- Moderate shoulder injury minor dental and lower back injury
- Disabled for one month
- Plaintiff experienced difficulties performing heavy lifting and had intended to become a diesel fitter and tailored his school subjects
- Had performed work experience with a mechanic



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- McMeekin J - *"Given the Plaintiff's age and stage of life, him still being at school, no precise calculation can be made"*
- Damages not able to be precisely calculated by reference to a defined weekly loss
- *"I must assess the prospective loss on very imprecise material. The nature of the case permits no more. Doing the best I can I assessed the future loss at \$100,000."*




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- **McLean v Nominal Defendant [2012]QDC73**
  - Motor vehicle accident – pedestrian – fractured feet
  - History of chronic alcoholism interfering with work
  - Some pre accident earning capacity which had been largely destroyed by the injury
  - Incentive to reduce alcohol intake - access to family




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- Judge indicated an award of \$45,000 to \$50,000 with some reduction for contingencies would have been appropriate if Claimant had no motivation to address his alcoholism
- Award of \$70,000 made because Judge accepted he would have made attempts to address his alcoholism and increase his pre injury earning capacity which was now dashed because of his injury




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- In *Carroll v Coomber and Suncorp* a troubled teenager with a limited work history and poor motivation to work was awarded \$40,000 for future economic loss
- In *Whitney v Whiteway and Suncorp* a legal secretary studying law with a mild whiplash injury to her neck was awarded \$60,000 for future economic loss **where past economic loss was not awarded**




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- In *Reardon-Smith v Torres-Farr and Allianz* a would-be professional surfer with "raw talent" who had not realised his potential was awarded \$35,000 for future economic loss
- In *Raffaut v Gillard* the court awarded \$50,000 for future economic loss to a worker who had not reported any ongoing disability to his employer




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- In *McMillan v Kissick and Anor* an unemployed former manual worker with a 0% to 5% whiplash injury was awarded \$318,000 for future economic loss, set against a background of a chequered employment history, questionable personality traits, a criminal history including being jailed for three months for manslaughter before the charges were withdrawn, domestic violence orders, testing positive to marijuana use, previously suffering a fractured skull and nose whilst blacking out while driving, a medical condition of depression with suicidal thoughts and being diagnosed physically unfit for work six months prior to the accident




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- *"Benefit of the doubt usually given to Plaintiff" – no "top up" award if Plaintiff doesn't improve.*



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