

**Submission
No 1**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Name: Mr David Elliott

Date received: 3/05/2012

I am a barrister acting for a typically disadvantaged young apprentice worker crippled at work at a factory in far western Sydney.

The apprentice worker suffered spinal injuries resulting in incomplete paraplegia when a forklift he was directed to drive, and on which he was unlicensed and untrained, rolled over due to the slippery potholed condition of the surface, and, the unsuitability of the vehicle for outdoor work on unmade surfaces.

He was unsupervised and working alone. He lay undiscovered for some time and nearly died. His employer was grossly negligent.

If he had been fortunate enough to have suffered this accident on a road related area he could have brought a claim for Motor Accident Damages but this happened on private premises at work and is a work injury claim, either by way of compensation or damages.

He can, after 3 years rehab, walk but only to a limited extent, with the aid of expensive leg splints costing about \$150 pw alone to maintain and replace and likely to cost more in the future as he ages and his needs become more pronounced and the technology improves. He has additional expenses for treatment and care of perhaps \$350 pw. Estimated conservatively his ongoing expenses for treatment and needs are about \$500 pw for life, another 60 odd years.

He previously earned about \$600 pw net and was about to complete his apprenticeship as a cabinet maker and would have been earning about \$1000 pw net plus by now, in future he would probably have done better still.

He receives his s. 40 weekly benefits of about \$450 pw and is losing about \$500 pw in wages.

He was rehabilitated into the position as a spare parts interpreter for Toyota and moved interstate to take up the job, unfortunately, the hopes of his rehabilitationists were not realised and he was unable to cope with even modified duties after about 8 weeks genuine sincere effort. There is no issue as to the incapacity continuing and likely to be indefinite/permanent.

He cannot work in his trade. He has limited skills and real barriers in terms of location and mobility and mental and physical stamina in gaining new ones.

If he sues in damages, he will receive only his economic loss to age 67, discounted by his residual capacity if any, vicissitudes, and, the 5% factor. He does not receive, as he would if he had had a motor accident, by for example, rolling the forklift on the driveway receive damages for his treatment expenses, domestic and personal care, and all the other special needs of a paraplegic including his splints.

Nonetheless in a catastrophic case a substantial sum, perhaps \$650,000.

However on obtaining his judgement against his obviously negligent employer he loses his s 60 treatment expenses, which in 20-25 years will have exceeded the sum awarded.

His options for compensation are to either take maybe \$650,000 now and run out of money in a few years, or survive on \$450 pw and have his medical needs met.

At 25 he has become a pensioner through no fault of his own as a result of gross negligence by his trusted employer. He will never realise even a fraction of his economic potential and that loss will go substantially uncompensated throughout his life.

If properly compensated he could employ carers, as it stands his mother bears this burden. She also has no right to be compensated.

The seriously injured and their families deserve better. He should be able to claim damages at a level which realistically reflects his true loss.