

1996—No. 464

LEGAL PROFESSION ACT 1987—REGULATION

(Relating to costs in workers compensation matters)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Legal Profession Act 1987, has been pleased to make the Regulation set forth hereunder.

J W Shaw
Attorney General.

Commencement

1. This Regulation commences on 1 October 1996.

Amendments

2. The Legal Profession Regulation 1994 is amended:

- (a) by omitting clause 23 (1) (a) and (c);
- (b) by omitting “section 196” from clause 23 (3) and by inserting instead “section 196 (1) (b)”;
- (c) by omitting the note to clause 23 and by inserting instead:

Note: Section 208 (1) requires any assessment of costs payable on obtaining or enforcing a default judgment to be made in accordance with the costs fixed by this clause. (Section 196 (2) of the Act provides that a barrister or solicitor may not charge a client more than the fixed costs for such a legal service.)

- (d) by inserting after clause 23 the following clauses:

Prescribed costs for legal services in workers compensation matters: section 196 (1) (a)

23A. (1) This clause applies to costs for legal services provided in any workers compensation matter.

(2) The fair and reasonable costs fixed for a legal service specified in Schedule 2 are the costs specified in relation to that service in that Schedule, calculated in accordance with that Schedule.

(3) However, after calculating the costs for legal services specified in Parts 1 and 2 of Schedule 2, the total of all such costs is to be reduced by 10%.

Note: Section 208O(1) of the Act requires any assessment of costs for a legal service provided in any workers compensation matter to be made in accordance with the costs fixed by this clause. (Section 196 (2) of the Act provides that a barrister or solicitor may not charge a client more than the fixed cost for such a legal service.)

Prescribed costs for non-legal services in workers compensation matters: section 196 (1) (c)

23B. (1) This clause applies to costs for a matter that is not a legal service but is related to proceedings in any workers compensation matter.

(2) The amount of costs fixed for a service specified in Schedule 3 is the amount specified in relation to that service in that Schedule, calculated in accordance with that Schedule.

Note: Section 208O (2) of the Act requires an assessment of costs for a non-legal service to be made having regard to the costs fixed by this clause (Section 196 (2) of the Act does not regulate the amount that a barrister or solicitor may charge a client for such a non-legal service.)

(e) by inserting after Schedule 1 the following Schedules:

SCHEDULE 2—COSTS FOR LEGAL SERVICES

(Cl. 23A)

PART 1—SCHEDULE OF PRACTITIONERS' COSTS

Preparing process

1. Drawing/typing/checking originating process, notice of appeal to the court, notice of application for leave to make an appeal to the court, or third or subsequent party notice	\$56
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Preparing other documents

2. Drawing/typing/checking any document, including any notice of subpoena or document necessarily or properly filed or delivered to another party or to counsel or the court, but excluding a certificate of readiness, per page	\$17
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3.	(a) Drawing/typing/checking certificate of readiness where required	\$39
	(b) If the certificate of readiness is special or necessarily long, such allowance as the registrar thinks proper, not exceeding per page	\$17

Letters (including drafting, typing and checking)

4.	(a) Short letter (up to one folio in length)	\$17
	(b) Circular, being identical (save for address details) with any other letter	\$8
	(c) Any other letter, per folio	\$17

Telephone calls

5.	(a) Not requiring skill	\$14
	(b) Requiring skill or legal knowledge:	
	(i) not more than six minutes	\$20
	(ii) more than six minutes—per six minute unit after the first	\$14

Perusal of documents

6.	(a) Perusal of Court documents (being any document filed in court), per page or part of a page	\$15
	(b) Perusal of other documents, including correspondence, per folio	\$5
	(c) Where it is not necessary to peruse but it is necessary to scan a document, per page	\$3

Copying

7.	Being a photographic reproduction, carbon or other copy of a document including copies for use in court, copies of doctors' reports for use on hearing, sending or receiving facsimile transmission, including the time reasonably spent by a legal practitioner or clerk in preparing, sorting and collating such documents for copying, per page	\$1
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Note: In respect of facsimile transmissions, STD and IDD transmission fees may be claimed as disbursements.

Attendance

8.	(a) Time reasonably spent by a legal practitioner including travelling, waiting time, other than work referred to in items 1–7 inclusive, per quarter hour or part of a quarter hour	\$35
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(b) Time reasonably spent by a clerk including travelling, waiting time on work other than work referred to in items 1–7 inclusive, per six minute unit	\$4
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Notes:

1. Where the hearing of any proceedings is not reached, or is adjourned upon payment of the costs of the day, there may be allowed in respect of any time lost in awaiting the commencement of the hearing an amount not exceeding the amount that would have been allowed under item 8 (a) or (b) if that time had been spent in the hearing of the proceedings.
2. Where the legal practitioner is engaged in any other proceedings on the same day, the amount under item 8 (a) or (b) will be such proportion only as the registrar thinks reasonable, having regard to all the circumstances.
3. Where a party is not notified of any payment, withdrawal or discontinuance in time to prevent attendance at Court, there may be allowed for that attendance an amount in the discretion of the registrar not exceeding the amount claimable under item 8 (a) or (b) for one hour's attendance appropriate to the proceedings.

Specific skill, care and responsibility

9. Where any individual item merits any particular skill or attention an additional allowance is to be made in addition to any general allowance under item 10.

Skill, care and responsibility

10. Such sum as may be reasonable, having regard to all the circumstances of the case and in particular to:
 - (a) the complexity of the matter;
 - (b) the difficulty or novelty of the questions involved in the matter;
 - (c) the skill, specialised knowledge and responsibility involved and the time and labour extended by the legal practitioner;
 - (d) the number and importance of the documents prepared and perused, however brief;
 - (e) the general care and conduct of the legal practitioner having regard to his/her instructions and all relevant circumstances, including the preparation for hearings generally and for hearing of taxation/assessment of a bill of costs specifically.

Disbursements

11. Any disbursement necessarily incurred is to be allowed except in so far as any such disbursement is of an unreasonable amount or has been unreasonably incurred and any doubts which the taxing officer/costs assessor may have as to whether any disbursement was reasonably incurred or was reasonable in amount are to be resolved in favour of the receiving party.

Definitions

12. In this Part:
 “**page**” means a page typewritten or printed and which is a page of a nature or kind usual for the particular document and includes part of a page;
 “**folio**” means 100 words.

13. An allowance under Items 1, 2, 3 and 4 includes any file copy.

PART 2—ADVOCATES’ FEES

1. Briefs on hearing—Brief Fees are to be calculated on the nature of the relief obtained, in accordance with the following scale:

Scale	A	\$620
Scale	B	\$850
Scale	C	\$980

The scale appropriate for the relief obtained is to be as follows:

(a) Property damage	A
(b) Medical, hospital etc	A
(c) Commutations and redemptions	A
(d) Lump sum loss of faculties under the former Act	A
(e) Lump sum loss of faculties (s 66), including any claim for pain and suffering	C
(f) Lump sum for pain and suffering	C
(g) Weekly payments (closed period)	B
(h) Weekly payments (continuing period)	C
(i) Death claims	C
(j) Death claims where respondent admits liability subject only to formal proof of marriage, dependency or other similar issue, only if certified by the Court	A
(k) Review of decisions of Commissioners (substantive matters)	C
(l) Review of decisions of Registrars or of Commissioners (procedural matters)	A
(m) Appeals to the Court	C

2. To appear in respect of any motion where the court certifies that the matter is appropriate for an advocate \$370

3.	To attend any second or subsequent conference in respect of the applicant, if certified	\$125–310
4.	To advise on evidence	\$125–310
5.	For drawing, settling any necessary document; conferences; advice (not including advice on evidence); pleadings or for any work involving an advocate in his or her chambers or offices; views, including travelling time; taking a reserved judgment; appearing at call overs; mentions and adjournments; other than any work referred to in items 1–4 inclusive—per hour:	\$140
6.	(a) In respect of items 1 to 5 for senior counsel: an amount to be decided at the discretion of the taxing officer/costs assessor. (b) Fees for senior counsel or more than one advocate will not be allowed without an order of the court. (c) The court may in a special case order that fees additional to those provided in this Schedule be payable to an advocate.	
7.	Refreshers: (a) Where the hearing is not concluded on the date on which it is begun, there will be allowed, unless the court otherwise orders, in respect of each further day on which the hearing continues—for more than 3 hours, a refresher of 75%, or for 3 hours or less, a refresher fee of 65% of the brief fee. (b) In respect of hearings outside the Sydney metropolitan area: (i) a full refresher of 75% will be allowed in respect of any subsequent day on which the hearing continues at a town other than that at which it commenced; (ii) unless the court otherwise orders no refresher fee will be allowed in respect of a hearing which continues at another town on the day on which it commenced; and (iii) no loading will be taken into account in calculating any refresher. (c) Where the hearing is adjourned upon an order for payment of the costs of the day—the fee equal to a refresher of 65% of the brief fee. (d) Where the matter is not reached on a day upon which it is listed for hearing—a fee equal to a refresher of 75% of the brief fee (if certified by the court).	

8. Loading:

- (a) In respect of any proceedings heard or partially heard outside the Sydney Metropolitan area, an advocate whose chambers or offices are in Sydney is to be entitled to a loading in accordance with Part 3 of this Schedule, and where a town has not been included in the determination the loading for that town is to be the loading for the nearest town that is so included.
- (b) Where a hearing takes place at two or more country towns, the loading payable is that appropriate to the farthest of those towns.
- (c) Where of the proceedings commenced, or continued to be heard, at a country town on any one day, an advocate holds more than one brief on hearing the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable.
- (d) Where proceedings commence in a country centre in which an advocate's chambers or offices are located, counsel are to be entitled to a loading applicable for that country centre should the matter continue or conclude in Sydney.

9. A solicitor providing an advocacy service is entitled to only 66% of the fee calculated under this Part when the service is provided to his or her own client or to a client of his or her employer.

PART 3—COUNTRY LOADINGS

1. For the purposes of clause 8 of Part 2 of this Schedule, the loading for attending a hearing at any of the following towns, for the first day is:

<i>Town</i>	<i>Loading</i>	<i>Town</i>	<i>Loading</i>
	\$		\$
Albury	723	Kempsey	629
Armidale	663	Lismore	658
Bateman's Bay	662	Lithgow	273
Bathurst	525	Maitland (including East Maitland)	411
Bega	799	Moree	616
Bourke	1141	Moruya	516
Broken Hill	1232	Moss Vale	284
Campbelltown	63	Mudgee	490
Casino	745	Murwillumbah	761
Cessnock	411	Muswellbrook	436
Cobar	1049	Narrabri	572
Coffs Harbour	584	Narrandera	568

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Condobolin	889	Newcastle	411
Cooma	882	Nowra	411
Coonamble	850	Nyngan	977
Cootamundra	603	Orange	468
Cowra	464	Parkes	633
Deniliquin	777	Penrith	63
Dubbo	615	Port Macquarie	530
Forbes	615	Queanbeyan	526
Glen Innes	584	Singleton	632
Gosford	176	Tamworth	613
Goulburn	434	Taree	490
Grafton	715	Tweed Heads	714
Griffith	588	Wagga Wagga	544
Gundagai	690	Wentworth	1154
Gunnedah	680	Wollongong	260
Hay	761	Yass	463
Inverell	683	Young	603
Katoomba	239		

2. If the advocate is a Senior Counsel—add \$75 per day to the relevant loading.
3. For each additional day attending a hearing at any of the towns listed above—add \$163.
4. Where the NRMA car rental discount is applicable, the amount of the loading is to be reduced by an amount that is calculated by subtracting the discount amount paid from the amount allowed in the loading of \$99.

SCHEDULE 3—COSTS FOR OTHER SERVICE

(Cl. 23B)

<i>Allowances to witnesses</i>	\$
I. Barristers, solicitors, accountants, medical practitioners, surveyors, architects, pharmacists and other professional persons attending to give evidence	160–300
or per hour	125–200
1A. Whenever a barrister, solicitor, accountant, architect, pharmacist, or other professional person (not being a medical practitioner) prepares a report, the fee for the preparation of such report is to be allowed at a rate per hour or part of an hour	125–200
2. Whenever the persons mentioned in item 1 are called to give expert evidence and not evidence of fact:	
2.1 attending to give expert evidence, including travelling to Court, where period from departure from home, hospital, place of practice, office, place of employment or other place to return thereto from attendance at Court does not exceed one and a half hours:	250–400
2.2 for every full hour after the first hour and a half or a proportion of an hour if not for a full hour:	125–200

2.3 the maximum amount payable per day under items 1, 2.1 and 2.2 above is the total of the number of hours that reasonably involved a witness at the rates applicable in items 1, 2.1 and 2.2.

3. Travelling and other allowances:

3.1 payment to be made at the rate of \$0.90 per kilometres one way after the first kilometre up to and including 80 kilometres, plus reasonable parking fees;

3.2 exceeding 80 kilometres—the reasonable costs of travelling plus the costs of reasonable accommodation, meals and parking.

4. Other witnesses:

4.1 such allowance as is commensurate with the witnesses' remuneration or circumstances, but not exceeding the allowances provided under items 1 and 2;

4.2 such additional amount as is reasonable for travelling expenses and sustenance and, in cases where accommodation is required, such further amount as having regard to all the circumstances is reasonable and has been paid in respect of accommodation.

Medical examinations and reports

5. The following fees may vary within the stated range, depending on the complexity of the matter, the number of documents to be studied and the amount of research needed to give the medical opinion.

5.1 Report made by an attending general practitioner:

(a) in respect of an initial consultation and examination of a patient:	120–160
(b) in respect of any further consultation and examination after the first:	80–120
(c) where a re-examination of the patient is not required:	60–80

5.2 Report made by an attending specialist:

(a) in respect of an initial consultation and examination of a patient:	200–300
(b) in respect of any further consultation and examination after the first:	150–250
(c) where a re-examination of the patient is not required:	100–175

5.3 Report made by a specialist who has not previously treated the patient:

(a) in respect of an initial consultation and examination of a patient:	220–500
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	(b) in respect of any further consultation and examination after the first:	200–450
	(c) where a re-examination of the patient is not required:	100–215
6.	Attending a joint examination (including travelling time where the distance does not exceed 8 kilometres):	
6.1	as an examining practitioner (including provision of report):	300–500
6.2	as a non-examining practitioner where the examination is conducted by another practitioner:	130–175
6.3	provision of report by non-examining practitioner [see 6.2 above]:	100–175
7.	Where special circumstances are shown to exist, eg, as in the case of a psychiatrist or psychologist necessitating prolonged or repeated attendances in a particular case, fees may be charged in accordance with item 1.	

Interpreters

8.	Allowances for interpreters:	
8.1	amounts reasonably paid to an interpreter attending court in respect of hearing:	
	not exceeding per day:	250
8.2	in respect of attending any conference or medical examination:	
	(a) for the first two hours or part of two hours:	80
	(b) for every hour or part of an hour after the initial two hours:	30
8.3	in respect of a translation of any document—per folio of 100 words:	22
8.4	travelling—as per amounts allowed under items 4.1 and 4.2, [Other witnesses] of this scale.	

EXPLANATORY NOTE

Section 196 (1) (a) of the Legal Profession Act 1987 empowers the regulations to make provisions for or with respect to fixing fair and reasonable costs for legal services provided in any workers compensation matter. A barrister or solicitor is not entitled to be paid, or to recover, for a legal service an amount that exceeds the fair and reasonable costs fixed for the service by the regulation.

Section 196 (1) (c) of the Legal Profession Act 1987 empowers the making of regulations fixing an amount of costs for a matter that is not a legal service but is related to proceedings (for example, expenses of witnesses). Those amounts may be taken into account by a costs assessor in assessing costs under the Legal Profession Act 1987.

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The object of this Regulation is to replace the provision of the Legal Profession Regulation 1994 that fixes costs in respect of workers compensation matters and non-legal services. That provision presently adopts determinations of the now defunct Legal Fees and Costs Board.

This Regulation fixes a new scale of costs for legal and non-legal services relating to workers compensation matters. The determinations of the Legal Fees and Costs Board will no longer be of any effect in relation to such costs.

This Regulation is made under the Legal Profession Act 1987, including section 196 (regulations to provide for related costs) and section 216 (the general regulation-making power).
