



New South Wales

# Workers Compensation (General) Amendment (Costs) Regulation 2001

under the

Workplace Injury Management and Workers Compensation  
Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workplace Injury Management and Workers Compensation Act 1998*.

JOHN DELLA BOSCA, M.L.C.,  
Special Minister of State

## Explanatory note

The objects of this Regulation are:

- (a) to fix maximum costs and disbursements recoverable by a legal practitioner or agent for all legal services or agent services and other matters provided in connection with a claim for statutory compensation or a claim for work injury damages (other than costs that are specifically excluded by the Regulation), and
- (b) to place restrictions on the awarding of costs by a court on a party and party basis in court proceedings for work injury damages, and
- (c) to provide for the assessment of costs by the Registrar of the Workers Compensation Commission.

This Regulation is made under the *Workplace Injury Management and Workers Compensation Act 1998*, including Part 8 of Chapter 7, and section 248 (the general regulation-making power).

**2001 No 1032**

Clause 1                      Workers Compensation (General) Amendment (Costs) Regulation 2001

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**Workers Compensation (General) Amendment  
(Costs) Regulation 2001**

**1 Name of Regulation**

This Regulation is the *Workers Compensation (General) Amendment (Costs) Regulation 2001*.

**2 Commencement**

This Regulation commences on 1 January 2002.

**3 Amendment of Workers Compensation (General) Regulation 1995**

The *Workers Compensation (General) Regulation 1995* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

### [1] Part 23

Insert after Part 22 (as inserted by the *Workers Compensation (General) Amendment (Savings, Transitional and Other Matters) Regulation 2001*):

## Part 23 Costs

### Division 1 Preliminary

#### 105 Definition

In this Part, and in Schedules 6 and 7:

*insurer* includes an employer.

**Note.** Section 332 (2) of the 1998 Act provides that expressions in Division 1 (Costs) of Part 8 of Chapter 7 of that Act (and consequently expressions used in this Part) have the same meaning as in Part 11 (Legal fees and other costs) of the *Legal Profession Act 1987*, except where otherwise provided. Under the *Legal Profession Act 1987*, **costs** includes barristers' and solicitors' fees as well as other items that may be charged by barristers and solicitors (such as expenses and disbursements).

#### 106 Costs not regulated by this Part

Costs referred to in this Part do not include any of the following:

- (a) costs for legal services provided for an appeal under section 353 (Appeal against decision of Commission constituted by Presidential Member) of the 1998 Act,
- (b) fees for investigators' reports or for other material produced or obtained by investigators (such as witness statements or other evidence),
- (c) fees for accident reconstruction reports,
- (d) fees for accountants' reports,
- (e) fees for reports from health service providers,

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

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- (f) fees for other professional reports relating to treatment or rehabilitation (for example, architects' reports concerning house modifications),
- (g) fees for interpreter or translation services,
- (h) fees imposed by a court or the Commission,
- (i) travel costs and expenses of the claimant in the matter for attendance at medical examinations, a court or the Commission,
- (j) witness expenses at a court or the Commission.

**Note.** Under section 339 of the 1998 Act, the WorkCover Authority may fix maximum fees for the provision of reports, or appearance before the Commission, by health service providers.

### Division 2 Costs recoverable in compensation matters

#### Subdivision 1 Preliminary

##### 107 Application of Division

This Division is made under section 337 of the 1998 Act and applies to the following costs payable on a party and party basis, on a practitioner or agent and client basis or on any other basis:

- (a) costs for legal services or agent services provided in or in relation to a claim for compensation, and
- (b) costs for matters that are not legal or agent services but are related to a claim for compensation.

**Note.** Section 337 (3) and (4) of the 1998 Act provide that a legal practitioner or an agent is not entitled to be paid or recover for a legal service or agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by regulations under section 337.

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## Subdivision 2 Maximum costs recoverable by legal practitioners and agents in compensation matters

### 108 Fixing of maximum costs recoverable by legal practitioners and agents

- (1) The costs that are recoverable, and the maximum costs that are recoverable, for:
  - (a) legal services or agent services provided in or in relation to a claim for compensation, and
  - (b) matters that are not legal or agent services but are related to a claim for compensation,

are the costs set out in Schedule 6, except as otherwise provided by this Part.

**Note.** The effect of this clause is that a legal practitioner or agent cannot recover any costs in relation to a claim for compensation unless those costs are set out in Schedule 6, except as otherwise provided in this Part.

- (2) If there is a change in the legal practitioner or agent retained by a party in or in relation to a claim made or to be made for compensation, the relevant costs are to be apportioned between the legal practitioners or agents concerned.
- (3) If there is a dispute as to such an apportionment, either legal practitioner or agent concerned (or the client) may refer the dispute to the Commission for determination.
- (4) A legal practitioner or agent has the same right of appeal against a determination made under subclause (3) as the legal practitioner or agent would have under clause 142 if the determination were a determination made by the Registrar in relation to a bill of costs.

**Note.** Division 2 of Part 11 of the *Legal Profession Act 1987* requires barristers and solicitors, before providing any legal services to a client, to provide the client with a written disclosure of the basis of the costs (or an estimate of the likely costs) of legal services concerned.

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

### **Division 3 Costs recoverable in work injury damages matters**

#### **Subdivision 1 Maximum costs recoverable by legal practitioners in work injury damages matters**

##### **109 Application of Division**

This Division is made under section 337 of the 1998 Act and applies to the following costs payable on a party and party basis, on a solicitor and client basis or on any other basis:

- (a) costs for legal services or agent services provided in or in relation to a claim for work injury damages, and
- (b) costs for matters that are not legal or agent services but are related to a claim for work injury damages.

**Note.** Section 337 (3) of the 1998 Act provides that a legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by regulations under section 337.

##### **110 Fixing of maximum costs recoverable by legal practitioners**

- (1) The maximum costs for:
  - (a) legal services provided in or in relation to a claim for work injury damages, and
  - (b) matters that are not legal services but are related to a claim for work injury damages,

are the costs set out in Schedule 7, except as otherwise provided by this Part.

**Note.** The effect of this clause is that a legal practitioner or agent cannot recover any costs in relation to a claim for work injury damages unless those costs are set out in Schedule 7, except as otherwise provided in this Part.

- (2) If there is a change in the legal practitioner retained by a party in or in relation to a claim for work injury damages, the relevant costs are to be apportioned between the legal practitioners concerned.

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- (3) If there is a dispute as to such an apportionment, either legal practitioner concerned (or the client concerned) may refer the dispute to the Commission for determination.
  - (4) A legal practitioner has the same right of appeal against a determination made under subclause (3) as the practitioner would have under clause 142 if the determination were a determination made by the Registrar in relation to a bill of costs.

**Note.** Division 2 of Part 11 of the *Legal Profession Act 1987* requires barristers and solicitors, before providing any legal services to a client, to provide the client with a written disclosure of the basis of the costs (or an estimate of the likely costs) of legal services concerned.

#### 111 Contracting out—practitioner/client costs

- (1) This clause applies in respect of costs in or in relation to a claim for work injury damages if a legal practitioner:
  - (a) makes a disclosure under Division 2 of Part 11 of the *Legal Profession Act 1987* (sections 180 and 181 excepted) to a party to the matter with respect to the costs, and
  - (b) enters into a costs agreement (other than a conditional costs agreement, within the meaning of that Part, that provides for the payment of a premium of more than 10% of the costs otherwise payable under the agreement on the successful outcome of the matter concerned) with that party as to those costs in accordance with Division 3 of that Part, and
  - (c) before entering into the costs agreement, advises the party (in a separate written document) that, even if costs are awarded in favour of the party, the party will be liable to pay such amount of the costs provided for in the costs agreement as exceeds the amount that would be payable under the 1998 Act in the absence of a costs agreement.
- (2) Schedule 7 does not apply to the costs concerned to the extent that they are payable on a practitioner and client basis.

## **Subdivision 2 Restriction on awarding of costs**

**Note.** This Subdivision is made under section 346 of the 1998 Act, which provides that a party is not entitled to an award of costs to which that section applies (being costs payable by a party in or in relation to a claim for work injury damages, including court proceedings for work injury damages) except as prescribed by the regulations or by the rules of the court concerned.

In the event of any inconsistency between the provisions of this Regulation and rules of court, the provisions of this Regulation prevail to the extent of the inconsistency: section 346 (4).

### **112 Costs where claimant no less successful than claimant's final offer**

If a claimant obtains an order or judgment on a claim that is no less favourable to the claimant than the terms of the claimant's final offer of settlement in mediation under this Act as certified by the mediator under section 318B of the 1998 Act, the court is to order the insurer to pay the claimant's costs on the claim assessed on a party and party basis.

### **113 Costs where claimant less successful than insurer's final offer or insurer found not liable**

- (1) If a claimant obtains an order or judgment on a claim that is less favourable to the claimant than the terms of the insurer's final offer of settlement in mediation under this Act as certified by the mediator under section 318B of the 1998 Act, the court is to order the claimant to pay the insurer's costs on the claim assessed on a party and party basis.
- (2) If a claimant does not obtain an order or judgment on a claim (that is, if the court finds the insurer has no liability for the claim), the court is to order the claimant to pay the insurer's costs on the claim assessed on a party and party basis.

### **114 Costs in other cases**

Except as provided by this Subdivision, the parties to court proceedings for work injury damages are to bear their own costs.



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**115 Deemed offer where insurer denies liability and no mediation**

If:

- (a) the insurer wholly denies liability, and
- (b) the matter is not referred to mediation, and
- (c) the claimant obtains an order or judgment on the claim, costs are to be awarded in accordance with this Subdivision as if:
  - (d) the insurer had made a final offer of settlement at mediation of \$0, and
  - (e) the claimant had made a final offer of settlement at mediation of the amount of damages specified in the pre-filing statement served under section 315 of the 1998 Act.

**116 Subdivision does not apply to ancillary proceedings**

This Subdivision does not apply to costs payable in or in relation to proceedings that are ancillary to proceedings on a claim for work injury damages, and a court is to award costs in such ancillary proceedings in accordance with the rules of the court.

**117 Multiple parties**

Where 2 or more defendants are alleged to be jointly or jointly and severally liable to the claimant and rights of contribution or indemnity appear to exist between the defendants, this Subdivision does not apply to an offer of settlement unless:

- (a) in the case of an offer made by the claimant—the offer is made to all the defendants and is an offer to settle the claim against all of them, and
- (b) in the case of an offer made to the claimant:
  - (i) the offer is to settle the claim against all the defendants concerned, and
  - (ii) where the offer is made by 2 or more defendants—by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the claimant for the whole amount of the offer.

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

### Division 4 Assessment of costs

#### Subdivision 1 Preliminary

##### 118 Definitions

In this Division:

*agent bill of costs* means a bill of costs for providing agent services within the meaning of section 250 of the 1998 Act.

*bill of costs* means a legal bill of costs or an agent bill of costs  
*client* of a legal practitioner or agent means a person to whom the practitioner or agent has provided legal services or agent services in respect of any workers compensation matter or work injury damages matter.

*legal bill of costs* means a bill of costs for providing legal services within the meaning of Part 11 of the *Legal Profession Act 1987*.

##### 119 Applications by clients

- (1) A client who is given a bill of costs may apply to the Registrar for an assessment of the whole of, or any part of, those costs.
- (2) An application relating to a bill of costs may be made even if the costs have been wholly or partly paid.
- (3) If any costs have been paid without a bill of costs, the client may nevertheless apply for an assessment. For that purpose the request for payment by the legal practitioner or agent is taken to be the bill of costs.

**Note.** Section 343 (1) of the 1998 Act provides that the legal representative or agent of a person in respect of a claim for compensation made or to be made by the person is not entitled to recover from the person any costs in respect of the claim unless those costs are awarded by the Commission.

##### 120 Applications by instructing practitioners or agents for assessment of costs in bills

- (1) A legal practitioner or agent who retains another legal practitioner or agent to act on behalf of a client may apply to the Registrar for an assessment of the whole of, or any part of,

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a bill of costs given in accordance with this Part by the other legal practitioner or agent in relation to the matter.

- (2) An application may not be made if there is a costs agreement between the client and the other legal practitioner or agent.
- (3) An application is to be made within 30 days after the bill of costs is given and may be made even if the costs have been wholly or partly paid.

**121 Application for assessment of costs by legal practitioner or agent giving bill**

- (1) A legal practitioner or agent who has given a bill of costs may apply to the Registrar for an assessment of the whole of, or any part of, those costs.
- (2) An application may not be made unless:
  - (a) the bill of costs includes the following particulars:
    - (i) a description of the legal services or agent services provided,
    - (ii) an identification of each activity, event or stage specified in Schedule 6 or 7, by reference to the item number of the activity, event or stage, that was carried out,
    - (iii) the amount sought, and
  - (b) at least 30 days have passed since the bill of costs was given or an application has been made under this Division by another person in respect of the bill of costs.

**122 Application for assessment of party/party costs**

- (1) A person who has paid or is liable to pay, or who is entitled to receive or who has received, costs as a result of an order for the payment of an unspecified amount of costs made by a court or the Commission may apply to the Registrar for an assessment of the whole of, or any part of, those costs.
- (2) A court or the Commission may direct the Registrar to assess costs payable as a result of an order made by the court or the Commission. Any such direction is taken to be an application for assessment duly made under this Division.

## **2001 No 1032**

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1      Amendments

---

### **123 How is an application to be made?**

- (1) An application for assessment is to be made in the form approved by the Commission and is, subject to subclause (4), to be accompanied by the fee determined by the Commission from time to time.
- (2) The application must authorise the Registrar to have access to, and to inspect, all documents of the applicant that are held by the applicant, or by any legal practitioner or agent concerned, in respect of the matter to which the application relates.
- (3) The Registrar may waive or postpone payment of the fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.
- (4) The Registrar may refund the fee paid under this clause either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.

### **124 Persons to be notified of application**

The Registrar is to cause a copy of an application for assessment to be given to any legal practitioner, agent or client concerned or any other person whom the Registrar thinks it appropriate to notify.

### **125 Registrar may require documents or further particulars**

- (1) The Registrar may, by notice in writing, require a person (including the applicant, the legal practitioner or agent concerned, or any other legal practitioner, agent or client) to produce any relevant documents of or held by the person in respect of the matter.
- (2) The Registrar may, by any such notice, require further particulars to be furnished by the applicant, legal practitioner, agent, client or other person as to instructions given to, or work done by, the legal practitioner or agent or any other legal practitioner or agent in respect of the matter and as to the basis on which costs were ascertained.
- (3) The Registrar may require any such particulars to be verified by statutory declaration.

- (4) A notice under this clause is to specify the period within which the notice is to be complied with.
- (5) If a person fails, without reasonable excuse, to comply with a notice under this clause, the Registrar may decline to deal with the application or may continue to deal with the application on the basis of the information provided.
- (6) A legal practitioner who fails, without reasonable excuse, to comply with a notice under this clause is guilty of professional misconduct.

**126 Consideration of applications**

- (1) The Registrar must not determine an application for assessment unless the Registrar:
  - (a) has given both the applicant and any legal practitioner, agent, client or other person concerned a reasonable opportunity to make written submissions to the Registrar in relation to the application, and
  - (b) has given due consideration to any submissions so made.
- (2) In considering an application, the Registrar is not bound by rules of evidence and may inform himself or herself on any matter in such manner as he or she thinks fit.
- (3) In the case of a legal practitioner, for the purposes of determining whether an application for assessment may be or is required to be made, or for the purpose of exercising any other function, the Registrar may determine any of the following:
  - (a) whether or not disclosure has been made in accordance with Division 2 of Part 11 of the *Legal Profession Act 1987* and whether or not it was reasonably practicable to disclose any matter required to be disclosed under that Division,
  - (b) whether a costs agreement exists, and its terms.

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

### **127 Assessment to give effect to maximum costs, 1998 Act and orders and rules of the Commission or court**

An assessment of costs is to be made in accordance with, and so as to give effect to, orders of the Commission or a court, the Rules of the Commission or rules of court, Part 8 of Chapter 8 of the 1998 Act, this Part, and Schedules 6 and 7.

### **Subdivision 2 Assessment of bills of costs between practitioner or agent and client**

#### **128 Assessment of bills generally**

- (1) When considering an application relating to a bill of costs, the Registrar must consider:
  - (a) whether or not it was reasonable to carry out the work to which the costs relate, and
  - (b) whether or not the work was carried out in a reasonable manner, and
  - (c) the fairness and reasonableness of the amount of the costs in relation to that work.
- (2) The Registrar is to determine the application by confirming the bill of costs or, if the Registrar is satisfied that the disputed costs are unfair or unreasonable, by substituting for the amount of the costs an amount that, in his or her opinion, is a fair and reasonable amount.
- (3) Any amount substituted for the amount of the costs may include an allowance for any fee paid or payable for the application by the applicant.
- (4) If a legal practitioner is liable under section 182 (3) of the *Legal Profession Act 1987* to pay the costs of the costs assessment (including the costs of the Registrar), the Registrar is to determine the amount of those costs. The costs incurred by the client are to be deducted from the amount payable under the bill of costs and the costs of the Registrar are to be paid to the Commission.

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- (5) The Registrar may not determine that any part of a bill of costs that is not the subject of an application is unfair or unreasonable.

**Note.** Clause 127 requires an assessment of costs to give effect to the maximum costs set out in Schedules 6 and 7, as well as to other matters. Section 337 (3) and (4) of the 1998 Act provide that a legal practitioner or an agent is not entitled to be paid or recover for a legal service or agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by regulations under section 337.

Section 343 (1) of the 1998 Act provides that the legal representative or agent of a person in respect of a claim for compensation made or to be made by the person is not entitled to recover from the person any costs in respect of the claim unless those costs are awarded by the Commission.

#### 129 Additional matters to be considered in assessing bills of costs

In assessing what is a fair and reasonable amount of costs, the Registrar may have regard to any or all of the following matters:

- (a) whether the legal practitioner or agent complied with any relevant regulation, barristers rule, solicitors rule or joint rule,
- (b) in the case of a legal practitioner—whether the legal practitioner disclosed the basis of the costs or an estimate of the costs under Division 2 of Part 11 of the *Legal Profession Act 1987* and any disclosures made,
- (c) any relevant costs agreement (subject to clause 130),
- (d) the skill, labour and responsibility displayed on the part of the legal practitioner or agent responsible for the matter,
- (e) the instructions and whether the work done was within the scope of the instructions,
- (f) the complexity, novelty or difficulty of the matter,
- (g) the quality of the work done,
- (h) the place where and circumstances in which the legal services were provided,
- (i) the time within which the work was required to be done.

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

### 130 Costs agreements not subject to assessment

- (1) The Registrar is to decline to assess a bill of costs if:
  - (a) the disputed costs are subject to a costs agreement that complies with Division 3 of Part 11 of the *Legal Profession Act 1987*, and
  - (b) the costs agreement specifies the amount of the costs or the dispute relates only to the rate specified in the agreement for calculating the costs.
- (2) If the dispute relates to any other matter, costs are to be assessed on the basis of that specified rate despite clause 128. The Registrar is bound by a provision for the payment of a premium that is not determined to be unjust under clause 131.
- (3) This clause does not apply to any provision of a costs agreement that the Registrar determines to be unjust under clause 133.
- (4) This clause does not apply to a costs agreement applicable to the costs of legal services if a legal practitioner failed to make a disclosure in accordance with Division 2 of Part 11 of the *Legal Profession Act 1987* of the matters required to be disclosed by section 175 or 176 of that Act in relation to those costs.

### 131 Unjust costs agreements

- (1) The Registrar may determine whether a term of a particular costs agreement entered into by a legal practitioner and a client is unjust in the circumstances relating to it at the time it was made.
- (2) For that purpose, the Registrar is to have regard to the public interest and to all the circumstances of the case and may have regard to the matters specified in section 208D (2) (a)–(j) of the *Legal Profession Act 1987*.
- (3) For the purposes of this clause, a person is taken to have represented another person if the person represented the other person, or assisted the other person to a significant degree, in the negotiations process up to, or at, the time the agreement was made.



- (4) In determining whether a provision of the agreement is unjust, the Registrar is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the agreement was made.

**132 Interest on amount outstanding**

- (1) The Registrar may, in an assessment, determine that interest is not payable on the amount of costs assessed or on any part of that amount and determine the rate of interest (not exceeding the rate referred to in section 190 (4) of the *Legal Profession Act 1987*).
- (2) This clause applies despite any costs agreement or section 190 of the *Legal Profession Act 1987*.
- (3) This clause does not authorise the giving of interest on interest.
- (4) This clause does not apply to or in respect of the assessment of costs referred to in Subdivision 3 (party/party costs).

**Subdivision 3 Assessment of party/party costs****133 Assessment of costs—costs ordered by court or Commission**

- (1) When dealing with an application relating to costs payable as a result of an order made by a court or the Commission, the Registrar must consider:
- (a) whether or not it was reasonable to carry out the work to which the costs relate, and
  - (b) what is a fair and reasonable amount of costs for the work concerned.
- (2) The Registrar is to determine the costs payable as a result of the order by assessing the amount of the costs that, in his or her opinion, is a fair and reasonable amount.
- (3) If a court or the Commission has ordered that costs are to be assessed on an indemnity basis, the Registrar must assess the costs on that basis, having regard to any relevant rules of the court or Commission.

## 2001 No 1032

### Workers Compensation (General) Amendment (Costs) Regulation 2001

#### Schedule 1 Amendments

---

- (4) The costs assessed are to include the costs of the assessment (including the costs of the parties to the assessment, and the Registrar). The Registrar may determine by whom and to what extent the costs of the assessment are to be paid.
- (5) The costs of the Registrar are to be paid to the Commission.

**Note.** Subdivision 2 of Division 3 of this Part limits the circumstances in which costs may be awarded on a party/party basis in relation to a claim for work injury damages.

Clause 127 requires an assessment of costs to give effect to the maximum costs set out in Schedules 6 and 7, as well as to other matters.

#### **134 Additional matters to be considered by Registrars in assessing costs ordered by court or Commission**

In assessing what is a fair and reasonable amount of costs, the Registrar may have regard to any or all of the following matters:

- (a) the skill, labour and responsibility displayed on the part of the legal practitioner or agent responsible for the matter,
- (b) the complexity, novelty or difficulty of the matter,
- (c) the quality of the work done and whether the level of expertise was appropriate to the nature of the work done,
- (d) the place where and circumstances in which the legal services were provided,
- (e) the time within which the work was required to be done,
- (f) the outcome of the matter.

#### **135 Effect of costs agreements in assessments of party/party costs**

- (1) The Registrar may obtain a copy of, and may have regard to, a costs agreement.
- (2) However, the Registrar must not apply the terms of a costs agreement for the purposes of determining appropriate fair and reasonable costs when assessing costs payable as a result of an order by a court or the Commission.

**136 Court or Commission may specify amount etc**

This Division does not limit any power of a court or the Commission to determine in any particular case the amount of costs payable or that the amount of the costs is to be determined on an indemnity basis.

**Subdivision 4 Enforcement of assessment**

**137 Certificate as to determination**

- (1) On making a determination, the Registrar is to issue to each party a certificate that sets out the determination.
- (2) The Registrar may issue more than one certificate in relation to an application for costs assessment. Such certificates may be issued at the same time or at different stages of the assessment process.
- (3) In the case of an amount of costs that has been paid, the amount (if any) by which the amount paid exceeds the amount specified in any such certificate may be recovered as a debt in a court of competent jurisdiction.
- (4) In the case of an amount of costs that has not been paid, the certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs, and the rate of any interest payable in respect of that amount of costs is the rate of interest in the court in which the certificate is filed.
- (5) For this purpose, the amount of unpaid costs does not include the costs incurred by the Registrar in the course of a costs assessment.
- (6) To avoid any doubt, this clause applies to or in respect of both the assessment of costs referred to in Subdivision 2 of this Division (practitioner/client costs) and the assessment of costs referred to in Subdivision 3 of this Division (party/party costs).
- (7) If the costs of the Registrar are payable by a party to the assessment (as referred to in clause 139), the Registrar may refuse to issue a certificate relating to his or her determination under this clause until the costs of the Registrar have been paid.

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

- (8) Subclause (7) does not apply in respect of a certificate issued before the completion of the assessment process under subclause (2).

### 138 Reasons for determination

The Registrar must ensure that a certificate issued under clause 137 that sets out his or her determination is accompanied by:

- (a) a statement of the reasons for the Registrar's determination, and
- (b) the amount of costs the Registrar determines is fair and reasonable, and
- (c) if the Registrar declines to assess a bill of costs under clause 130—the basis for doing so, and
- (d) if the Registrar determines that a term of a costs agreement is unjust—the basis for doing so, and
- (e) a statement of any determination under clause 132 that interest is not payable on the amount of costs assessed or, if payable, of the rate of interest payable.

### 139 Recovery of costs of costs assessment

- (1) This clause applies when the costs of the Registrar are payable by a party to the assessment (under section 182 (3) of the *Legal Profession Act 1987* or clause 128 or 133 (5)).
- (2) On making a determination, the Registrar may issue to each party a certificate that sets out the costs incurred by the Registrar in the course of the costs assessment.
- (3) The certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs.
- (4) The Registrar may take action to recover the costs of the Registrar.

### 140 Correction of error in determination

- (1) At any time after making a determination, the Registrar may, for the purpose of correcting an inadvertent error in the determination:

- (a) make a new determination in substitution for the previous determination, and
  - (b) issue a certificate under clause 137 that sets out the new determination.
- (2) Such a certificate replaces any certificate setting out the previous determination of the Registrar that has already been issued by the Registrar, and any judgment that is taken to have been effected by the filing of that previously issued certificate is varied accordingly.

**141 Determination to be final**

The Registrar's determination of an application is binding on all parties to the application and no appeal or other review lies in respect of the determination, except as provided by this Division.

**Subdivision 5 Appeals**

**142 Appeal against decision of Registrar as to matter of law**

- (1) A party to an application who is dissatisfied with a decision of the Registrar as to a matter of law arising in the proceedings to determine the application may, in accordance with the Rules of the Commission, appeal to the Commission constituted by a Presidential member against the decision.
- (2) The appeal is to be in the form approved by the Commission and be accompanied by the fee approved by the Commission from time to time.
- (3) After deciding the question the subject of the appeal, the Commission constituted by a Presidential member may, unless it affirms the Registrar's decision:
  - (a) make such determination in relation to the application as, in its opinion, should have been made by the Registrar, or
  - (b) remit its decision on the question to the Registrar and order the Registrar to re-determine the application.

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

- (4) On a re-determination of an application, fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.

### **143 Effect of appeal on application**

- (1) If a party to an application has appealed against a determination or decision of the Registrar, either the Registrar or the Commission constituted by a Presidential Member may suspend, until the appeal is determined, the operation of the determination or decision.
- (2) The Registrar or the Commission may end a suspension made by the Registrar. The court or the Commission may end a suspension made by the court or Commission.

### **Subdivision 6 Miscellaneous**

#### **144 Liability of legal practitioner or agent for costs in certain cases**

- (1) The Registrar may act as set out in subclause (2) if it appears to the Registrar that costs have been incurred improperly or without reasonable cause, or have been wasted by undue delay or by any other misconduct or default.
- (2) The Registrar may in the determination:
  - (a) disallow the costs as between the legal practitioner or agent and the practitioner's or agent's client, and
  - (b) direct the legal practitioner or agent to repay to the client costs that the client has been ordered by a court or the Commission to pay to any other party, and
  - (c) direct the legal practitioner or agent to indemnify any party other than the client against costs payable by the party indemnified.
- (3) Before taking action under this clause, the Registrar must give notice of the proposed action to the legal practitioner or agent and the client and give them a reasonable opportunity to make written submissions in relation to the proposed action.
- (4) The Registrar must give due consideration to any submissions so made.

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**145 Referral of misconduct to Legal Services Commissioner**

- (1) If the Registrar considers that any conduct of a legal practitioner or agent involves the deliberate charging of grossly excessive amounts of costs or deliberate misrepresentations as to costs, the Registrar must refer the matter to the Legal Services Commissioner appointed under the *Legal Profession Act 1987*.
- (2) For the purposes of the *Legal Profession Act 1987*, the deliberate charging of grossly excessive amounts of costs and deliberate misrepresentations as to costs are each declared to be professional misconduct.
- (3) The Registrar may refer any failure by a legal practitioner to comply with a notice issued under clause 125, or with any other provision of this Division, to the Legal Services Commissioner

**Division 5 Goods and services tax****146 GST may be added to costs**

- (1) Despite the other provisions of this Part, a cost fixed by Division 3 (Costs recoverable in work injury damages matters) may be increased by the amount of any GST payable in respect of the service to which the cost relates, and the cost as so increased is taken to be the cost fixed by this Part.
- (2) This clause does not permit a legal practitioner or agent to charge or recover, in respect of GST payable in respect of a service, an amount that is greater than:
  - (a) 10% of the maximum amount payable under this Part to the legal practitioner or agent in respect of the service apart from this clause, or
  - (b) the amount permitted under the New Tax System Price Exploitation law,whichever is the lesser.

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

(3) In this clause:

*GST* has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

*New Tax System Price Exploitation law* means:

- (a) the New Tax System Price Exploitation Code, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

### Division 6 Miscellaneous

#### 147 Modifications to Legal Profession Act 1987 relating to assessment of costs

A reference in section 175 (Obligation to disclose to clients basis of costs) or 182 (Effect of non-disclosure of matters related to basis of costs) to assessment of costs under Division 6 of Part 11 of the *Legal Profession Act 1987* is to be read as including, as an alternative to assessment under that Division, assessment of costs under Division 4 of Part 8 of Chapter 7 of the 1998 Act.

#### 148 Transitional provisions

- (1) In relation to claims for compensation, this Part:
  - (a) applies to new claims, and
  - (b) extends to proceedings with respect to existing claims that are treated as new claims under clause 93 but only if those proceedings had not commenced before clause 93 commenced.
- (2) In relation to claims for work injury damages, this Part applies to claims made after 1 January 2002.
- (3) In this clause, *existing claim* and *new claim* have the same meaning as in Chapter 7 of the 1998 Act.



**149 Special provision for matters involving coal miners**

This Part does not apply to legal services or agent services provided in any workers compensation matter involving a claim for compensation or work injury damages by a coal miner, and regulations made under Division 5 (Costs fixed by regulation) of Part 11 of the *Legal Profession Act 1987* continue to apply to legal services provided in such a matter.

**[2] Schedules 6 and 7**

Insert after Schedule 5:

## **Schedule 6 Maximum costs—compensation matters**

(Clause 108)

### **1 Costs determined by reference to activities or events in connection with the matter**

(1) In this Schedule:

*the table* means the Compensation Costs Table at the end of this Schedule.

(2) The maximum costs for an activity or event described in a Part of the table and carried out in or in relation to a claim made or to be made in respect of a particular injury are as follows:

(a) **Making claim for permanent impairment compensation or pain and suffering compensation**

For an activity or event carried out on behalf of a claimant in making a claim for compensation under section 66 or 67 of the 1987 Act—the cost set out in Column 3 of Part 1 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(b) **Certain events or activities on behalf of claimant until dispute referred or order sought**

For an activity or event carried out on behalf of a claimant in any of the following circumstances (other than for an activity or event covered by paragraph (d) of this clause and Part 3 of the table):

## 2001 No 1032

### Workers Compensation (General) Amendment (Costs) Regulation 2001

#### Schedule 1

#### Amendments

---

- (i) the insurer fails to determine a claim as and when required by the 1998 Act,
  - (ii) the insurer fails to commence weekly payments of compensation or discontinues or reduces weekly payments,
  - (iii) the insurer makes a reasonable offer of settlement (in the case of a claim for compensation under section 66 or 67 of the 1987 Act),
  - (iv) the insurer denies liability in respect of the claim by serving a notice under section 74 of the 1998 Act,  
—the cost set out in Column 3 of Part 2A of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.
- (c) **Certain activities or events on behalf of insurer until dispute referred or order sought**  
For an activity or event carried out on behalf of an insurer in any of the following circumstances (other than for an activity or event covered by paragraph (d) of this clause and Part 3 of the table):
- (i) the insurer fails to determine a claim as and when required by the 1987 Act,
  - (ii) the insurer fails to commence weekly payments of compensation or discontinues or reduces weekly payments of compensation,
  - (iii) in the case of a claim for compensation under section 66 or 67 of the 1987 Act, the insurer makes a reasonable offer of settlement on the claim,
  - (iv) the insurer denies liability in respect of the claim by serving a notice under section 74 of the 1998 Act,  
—the cost set out in Column 3 of Part 2B of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

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- (d) **Certain applications for expedited assessment**  
For an activity or event carried out on behalf of a claimant or insurer in any of the following circumstances:
- (i) the insurer fails to determine a claim for medical expenses involving less than \$5000,
  - (ii) the insurer fails to commence weekly payments of compensation where less than 12 weeks' compensation is sought by the claimant and an interim payment order is made by the Registrar (whether or not the interim payment order was sought by a party to the claim),
- the cost set out in Column 3 of Part 3 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.
- (e) **Referral of dispute to determination of the dispute**  
For an activity or event carried out on behalf of a claimant or insurer from the time of referral of a dispute to the Commission to determination of the dispute by the Commission constituted by an Arbitrator—the cost set out in Column 3 of Part 4 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.
- (f) **Appeal to a Medical Appeal Panel for dispute about degree of permanent impairment**  
For an activity or event carried out on behalf of a claimant or insurer in respect of an appeal to a Medical Appeal Panel involving a medical dispute as to the degree of permanent impairment of the injured worker—the cost set out in Column 3 of Part 5 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.
- (g) **Referral of a question of law to President**  
For an activity or event carried out on behalf of a claimant or insurer in respect of the referral of a question of law to the Commission constituted by the President—the cost set out in Column 3 of Part 6 of the table opposite that activity or event up to the maximum
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## 2001 No 1032

### Workers Compensation (General) Amendment (Costs) Regulation 2001

#### Schedule 1

#### Amendments

---

total costs for that type of activity or event set out in Column 4 of the table.

(h) **Registration of agreement under sec 66A of 1987 Act or a commutation agreement**

For an activity or event carried out on behalf of a claimant or insurer in respect of the registration of an agreement under section 66A of the 1987 Act or a commutation agreement—the cost set out in Column 3 of Part 7 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(i) **Appeals to Presidential member**

For an activity or event carried out on behalf of a claimant or insurer in respect of an appeal to the Commission constituted by a Presidential Member—the cost set out in Column 3 of Part 8 of the table opposite that activity or event up to the maximum total costs for that activity or event set out in Column 4 of the table.

(j) **Any other substantive proceedings before the Commission**

For an activity or event carried out in respect of any other proceedings before the Commission involving the determination of substantive legal issues (including applications for review of existing orders, disputes relating to suitable duties, and disputes relating to apportionment)—the costs set out in Column 3 of Part 9 of the table opposite that activity or event up to the maximum total costs for that type of activity or event set out in Column 4 of the table.

(3) This clause is subject to this Schedule.

## 2 **Multiple claims or disputes in respect of an injury to be treated as a single claim or dispute**

(1) In the event that more than one claim is made in respect of a particular injury, or more than one dispute arises in respect of a claim, the maximum total costs for a type of activity or event in respect of the injury, regardless of how many times the activity or event is carried out, is the maximum set out in Column 4 of the table in relation to that type of activity or event.

- (2) Subclause (1) does not apply if:
- (a) a period of more than 12 months has elapsed between the making of the first claim in respect of the injury and the making of a subsequent claim (and the same applies to each claim subsequent to that claim), or
  - (b) a period of more than 12 months has elapsed between the notification of the first dispute in respect of the claim and the notification of a subsequent dispute (and the same applies to each dispute subsequent to that dispute), or
  - (c) the Commission or the Registrar orders that the claims or disputes are to be treated as separate claims or disputes for the purposes of the calculation or assessment of costs.

### 3 Restrictions on costs

- (1) Costs specified in a Part of the table (other than Part 2A or 2B) are payable only for an activity or event that is carried out in the period commencing when the first activity or event specified in that Part is commenced and concluding on either the completion of the last activity or event specified in that Part or finalisation of the matter (whichever occurs first).
- (2) Costs specified in Part 2A or 2B of the table are payable only for an activity or event that is carried out in the period commencing when the first activity or event specified in that Part is commenced and concluding on:
  - (a) the referral of a dispute in respect of the claim to the Commission, or the seeking of an order from the Commission, or
  - (b) the completion of the last activity or event specified in that Part, or
  - (c) finalisation of the matter,whichever occurs first.
- (3) If costs specified in Part 3 of the table are payable in relation to a matter, costs specified in Parts 2A, 2B and 4 of the table are payable only in respect of the matter if the matter is subsequently referred for determination after the conduct of an expedited assessment by the Registrar.

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

### 4 Costs where multiple insurers party to claim

If more than one insurer (or any combination of insurers) is a party to a claim or a dispute or other matter in relation to a claim, the maximum costs in respect of the matter are the total of the following:

- (a) the costs for the matter calculated in accordance with the table,
- (b) 50% of that amount per party (other than the party who made the claim),

and payment of the costs is to be shared equally among the insurers who are parties to the matter.

**Note.** Clause 105 provides that in Part 23 (Costs) and Schedules 6 and 7, the term *insurer* includes an employer.

### 5 Calculation of hourly rates

If an hourly rate is specified for an activity or event in the table, the maximum amount of costs set out for that activity or event is to be calculated to the nearest quarter hour.

### 6 Substantive legal issues

The Commission or the Registrar may determine, for the purposes of clause 1 (2) (j), whether a particular activity or event is in respect of a substantive legal issue.

### 7 Special provision for medical disputes and disputes about weekly payments of compensation

Despite any other provision of this Schedule, if a medical dispute or a dispute about weekly payments of compensation is finalised by an agreement for payment of an amount less than \$1,000, or an award for payment of an amount less than \$1,000, the maximum amount of costs for the dispute is \$200.

### 8 Certain agents not entitled to costs

An agent who is not an agent within the definition of *agent* in section 356 (6) of the 1998 Act is not entitled to be paid or recover any costs.

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**Compensation Costs Table**

<b>Column 1 Item No</b>	<b>Column 2 Activity or event</b>	<b>Column 3 Maximum amount for individual activity/event</b>	<b>Column 4 Maximum total for type of activity/ event</b>
<b>Part 1 Making claim for permanent impairment compensation or pain and suffering compensation</b>			
1.01	Obtaining and reviewing medical reports (not including medical practitioners' fees for the reports)	If the matter is finalised by the payment of compensation to the claimant—\$150 per report	\$300
		If the matter is not finalised by the payment of compensation—nil	
1.02	Lodging claim with insurer if the insurer has not already made an offer of settlement	If the matter is finalised by the payment of compensation to the claimant—\$100	\$100
		If the matter is not finalised by the payment of compensation—nil	
<b>Part 2A Certain events or activities on behalf of claimant until dispute referred or order sought</b>			
2.01	Obtaining instructions from client	\$250 per hour	\$250
2.02	Obtaining medical or other reports from insurer or requesting further information	\$20 per request	\$40 (for any party)
2.03	Referring insurer's reports to a medical specialist or the claimant's nominated treating doctor for review	\$20 per referral	\$40

**2001 No 1032**

## Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

<b>Column 1 Item No</b>	<b>Column 2 Activity or event</b>	<b>Column 3 Maximum amount for individual activity/event</b>	<b>Column 4 Maximum total for type of activity/ event</b>
2.04	Referring claimant to medical practitioner for examination, including review (other than where a report has already been obtained under Item 1.01)	\$150 per referral	\$300
2.05	Briefing a factual investigator or other investigator to obtain witness statements or other evidence (not including the investigator's fee)	\$100	\$100
2.06	Requesting a review of the claim from the insurer, prior to referral of the matter to the Commission	\$250 per hour	\$500
2.07	Agreeing terms of settlement with the insurer following a review of the claim by the insurer for a dispute (not being a claim for compensation under section 66 or 67 of the 1987 Act)	\$300	\$300
2.08	Agreeing terms of settlement with the insurer in the case of a claim for compensation under section 66 or 67 of the 1987 Act following a review of the claim by the insurer	\$750	\$750



## Workers Compensation (General) Amendment (Costs) Regulation 2001

Amendments

Schedule 1

<b>Column 1 Item No</b>	<b>Column 2 Activity or event</b>	<b>Column 3 Maximum amount for individual activity/event</b>	<b>Column 4 Maximum total for type of activity/ event</b>
<b>Part 2B</b>	<b>Certain activities or events on behalf of insurer until dispute referred or order sought</b>		
2.09	Obtaining instructions from client where the claimant seeks a review of the insurer's determination of the claim	\$250 per hour	\$250
2.10	Referring a further report provided by claimant for review	\$20 per referral	\$40
2.11	Referring claimant to a medical practitioner for further examination	\$150 per referral	\$300
2.12	Briefing a factual investigator or other investigator to obtain witness statements, surveillance information or other evidence (not including the investigator's fee)	\$100	\$100
2.13	Providing advice to the insurer in relation to the review of the insurer's determination of the claim sought by the claimant	\$250 per hour	\$500
2.14	Agreeing terms of settlement with the claimant following a review of the insurer's determination of the claim for a dispute (not being a claim for compensation under section 66 or 67 of the 1987 Act)	\$300	\$300

**2001 No 1032**

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

<b>Column 1 Item No</b>	<b>Column 2 Activity or event</b>	<b>Column 3 Maximum amount for individual activity/event</b>	<b>Column 4 Maximum total for type of activity/ event</b>
2.15	Agreeing terms of settlement with the claimant in the case of a claim for compensation under section 66 or 67 of the 1987 Act following a review of the insurer's determination of the claim	\$750	\$750
<b>Part 3 Certain applications for expedited assessment</b>			
3.01	Applying for expedited assessment to the Commission	If the application results in the making of an interim payment order—\$200 (claimant's legal practitioner or agent only)  If the application does not result in the making of an interim payment order—nil	\$200 (claimant's legal practitioner or agent only)
<b>Part 4 Referral of dispute to determination of the dispute</b>			
4.01	Lodging any of the following with the Commission: (a) an application for resolution of a dispute, (b) a response to an application, (c) an application for expedited assessment, (d) an application for joinder of another party	\$300	\$300
4.02	Service of material in relation to Item 4.01 on the other parties to the dispute	\$40 for the first party, then \$20 for each additional party	\$100

## Workers Compensation (General) Amendment (Costs) Regulation 2001

Amendments

Schedule 1

<b>Column 1 Item No</b>	<b>Column 2 Activity or event</b>	<b>Column 3 Maximum amount for individual activity/event</b>	<b>Column 4 Maximum total for type of activity/ event</b>
4.03	Requesting the Commission to make orders for the production of documents	\$60 for the initial order, then \$40 for each additional order	\$220
4.04	Lodging an objection to a request for an order for the production of documents	\$60 per objection	\$120
4.05	Reviewing documentation produced under an order of the Commission, exchanging information with the other parties and obtaining further instructions from client	\$250 per hour	\$500
4.06	Applying for an order for the attendance of witnesses at proceedings before the Commission	\$60 for the initial order, then \$40 for each additional order	\$140
4.07	Applying to refer a matter to an approved medical specialist, or responding to such an application (including costs associated with agreeing on the approved medical specialist and review of the report by the approved medical specialist).	\$100	\$100
4.08	Preparing for a conference (including providing advice to client)	\$250 per hour	\$500
4.09	Attending and participating in a conference with an Arbitrator (other than an arbitration hearing or where Item 4.10 applies)	\$250 per hour	\$1000

**2001 No 1032**

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

<b>Column 1 Item No</b>	<b>Column 2 Activity or event</b>	<b>Column 3 Maximum amount for individual activity/event</b>	<b>Column 4 Maximum total for type of activity/ event</b>
4.10	Attending and participating in a conference with an Arbitrator where the Arbitrator determines that the matter is complex and the matter proceeds directly to arbitration	\$250 per hour	\$1500
4.11	Attending and participating in an arbitration hearing (other than where Item 4.10 applies, and subject in the case of a claim for compensation under section 66 or 67 of the 1987 Act to any Rules of the Commission relating to offers of compromise or settlement)	\$250	\$250
4.12	Reporting to the client on the outcome of a conference or arbitration (including finalising the applicant's matter with the Health Insurance Commission or Centrelink (or both))	\$150	\$150
<b>Part 5</b>	<b>Appeal to a Medical Appeal Panel for dispute about degree of permanent impairment</b>		
5.01	Lodgment of appeal and preparation for appeal, or preparation of a response to such an appeal	If the result of the appeal is more favourable to the applicant for appeal—\$100 (applicant's legal practitioner or agent only)	\$100

Workers Compensation (General) Amendment (Costs) Regulation 2001

Amendments

Schedule 1

Column 1 Item No	Column 2 Activity or event	Column 3 Maximum amount for individual activity/event	Column 4 Maximum total for type of activity/ event
5.02	Attendance at a Medical Appeal Panel hearing	If the result of the appeal is not more favourable to the applicant for appeal—nil (applicant’s legal practitioner or agent only)	\$100
		For the respondent’s legal practitioner or agent—\$100	
		If the result of the appeal is more favourable to the applicant for appeal—\$200 per hour (applicant’s legal practitioner or agent only)	\$400
		If the result of the appeal is not more favourable to the applicant for appeal—nil (applicant’s legal practitioner or agent only)	
		For the respondent’s legal practitioner or agent—\$200 per hour	\$400

**2001 No 1032**

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

Column 1 Item No	Column 2 Activity or event	Column 3 Maximum amount for individual activity/event	Column 4 Maximum total for type of activity/ event
<b>Part 6 Referral of a question of law to President</b>			
6.01	Obtaining advice from counsel and making an application including written submissions, or preparing a response to such an application including written submissions and obtaining advice from counsel (including counsel's fee for advice)	If the President grants leave to appeal—\$600 (applicant's legal practitioner or agent only)  If the President does not grant leave to appeal—nil (applicant's legal practitioner or agent only)	\$600
6.02	Attending at proceedings before the Commission constituted by the President without counsel present	For the respondent's legal practitioner or agent—\$600  \$250 per hour	\$600  \$500
6.03	Attending at proceedings before the Commission constituted by the President with counsel present (including counsel's fee for attendance)	\$125 per hour for legal practitioner (other than counsel) or agent  \$300 per hour for counsel	\$250  \$600
<b>Part 7 Registration of agreement under sec 66A of 1987 Act or a commutation agreement</b>			
7.01	All work associated with registration of the agreement	\$120	\$120

## Workers Compensation (General) Amendment (Costs) Regulation 2001

Amendments

Schedule 1

<b>Column 1 Item No</b>	<b>Column 2 Activity or event</b>	<b>Column 3 Maximum amount for individual activity/event</b>	<b>Column 4 Maximum total for type of activity/ event</b>
<b>Part 8 Appeals to Presidential member</b>			
8.01	Lodging application or response to such an application including written submissions	\$320	\$320
8.02	Obtaining the advice of counsel (including counsel's fee for advice)	\$500	\$500
8.03	Attending at proceedings before the Commission constituted by the President or Deputy President without counsel present	\$250 per hour	\$500
8.04	Attending at proceedings before the Commission constituted by the President or Deputy President with counsel present (including counsel's fee for attendance)	\$125 per hour for legal practitioner (other than counsel) or agent  \$300 per hour for counsel	\$250  \$600
<b>Part 9 Any other substantive proceedings before the Commission</b>			
9.01	Conduct of any other proceedings before the Commission involving the determination of substantive legal issues, including preparatory work	\$250 per hour	\$625

**2001 No 1032**

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

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**Schedule 7 Maximum costs for legal services—  
work injury damages matters**

(Clause 110)

- 1 Costs determined by reference to certain stages in the matter**
- (1) The maximum costs for legal services provided for a stage of a claim for work injury damages set out in Column 1 of the Work Injury Costs Table A to this clause are the costs set out in Column 2 opposite that stage.
  - (2) However, if a legal practitioner was first retained in the matter after a certificate as to mediation was issued under section 318B of the 1998 Act (or, if the matter is not referred to mediation because the insurer wholly denies liability, or the insurer has failed to respond to the pre-filing statement, after the service of the pre-filing statement of claim), the maximum costs are those set out in the Work Injury Costs Table B to this clause.
  - (3) Costs may be charged for more than one stage described in this Schedule.
  - (4) Other than stage 1 in the Work Injury Costs Table B to this clause, each stage specifies the maximum costs payable for all legal services provided in the period commencing on the occurrence of one specified event and concluding on either the occurrence of another specified event or settlement of the matter (whichever occurs first).

**Work Injury Costs Table A**

<b>Column 1 Stage</b>	<b>Column 2 Costs</b>
1 From the acceptance of the retainer to the preparation and service of a claim under section 260 of the 1998 Act (including the provision of all relevant particulars under 281 of that Act)	(a) in the case of a legal practitioner acting for a claimant—\$200 (b) in the case of a legal practitioner acting for an insurer—nil



## Workers Compensation (General) Amendment (Costs) Regulation 2001

Amendments

Schedule 1

Column 1 Stage	Column 2 Costs
2 From service of the claim under section 260 of the 1998 Act to the preparation and service of the pre-filing statement of claim under section 315 of that Act	(a) in the case of a legal practitioner acting for a claimant—\$300 (b) in the case of a legal practitioner acting for an insurer—nil
3 If: (a) the matter is referred to mediation and settlement occurs after the service of the pre-filing statement of claim without the issue of a certificate as to mediation under section 318B of the 1998 Act, or (b) the matter is not referred to mediation (because the insurer denies liability) and settlement occurs without the commencement of court proceedings, or (c) the insurer does not respond to the pre-filing statement of claim and settlement occurs without the commencement of court proceedings —from service of the pre-filing statement to finalisation of the matter	In addition to the \$500 specified for stages 1 and 2 (if chargeable): (a) if the settlement amount is \$20,000 or less and the insurer wholly admitted liability for the claim—\$500 (b) if the settlement amount is \$20,000 or less and the insurer wholly or partly denied liability for the claim—10% of the settlement amount (c) if the settlement amount is more than \$20,000 but less than \$50,001 and the insurer wholly admitted liability for the claim—\$500 plus 12% of the settlement amount over \$20,000 (d) if the settlement amount is more than \$20,000 but less than \$50,001 and the insurer wholly or partly denied liability for the claim—\$2,000 plus 12% of the settlement amount over \$20,000 (e) if the settlement amount is \$50,001 or more but less than \$100,001 and the insurer wholly admitted liability for the claim—\$4,100 plus 10% of the settlement amount over \$50,000 (f) if the settlement amount is \$50,001 or more but less than \$100,001 and the insurer wholly or partly denied liability for the claim—\$5,600

**2001 No 1032**

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

---

<b>Column 1 Stage</b>	<b>Column 2 Costs</b>
	(g) if the settlement amount is \$100,001 or more and the insurer wholly admitted liability for the claim—\$9,100 plus 2% of the settlement amount over \$100,000
	(h) if the settlement amount is \$100,001 or more and the insurer wholly or partly denied liability for the claim—\$10,600 plus 2% of the settlement amount over \$100,000
4 If the matter is referred to mediation and settlement occurs after the issue of a certificate as to the mediation under section 318B of the 1998 Act but without the commencement of court proceedings—from service of the pre-filing statement to finalisation of the matter	The total of the following: (a) an amount determined, in accordance with stage 3, by reference to the amount of the settlement, (b) 2% of the amount of the settlement
5 If the matter is referred to mediation and is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from service of the pre-filing statement to finalisation of the matter	The total of the following: (a) an amount determined in accordance with stage 4, by reference to the amount of the settlement or award as if that amount were the amount of the settlement referred to in stage 4, (b) 2% of the amount of the settlement or award

**Column 1  
Stage**

**Column 2  
Costs**

6	If the matter is not referred to mediation and the matter is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from service of the pre-filing statement to finalisation of the matter	The total of the following: (a) an amount determined in accordance with stage 3, by reference to the amount of the settlement or award as if that amount were the amount of the settlement referred to in stage 3, (b) 2% of the amount of the settlement or award
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**Work Injury Costs Table B**

**Column 1  
Stage**

**Column 2  
Costs**

1	Advice on the certificate as to mediation (if the matter is referred to mediation)	\$250
2	From the giving of advice on the certificate of mediation (or, if the matter is not referred to mediation, from acceptance of the retainer) to finalisation of the matter by settlement or award of damages.	In addition to the \$250 specified for stage 1 (if chargeable): (a) if the settlement amount or award is \$20,000 or less—nil (b) if the settlement amount or award is more than \$20,000 but less than \$50,001—10% of the settlement amount or award over \$20,000 (c) if the settlement amount or award is \$50,001 or more but less than \$100,001—\$3,000 plus 8% of the settlement amount or award over \$50,000 (d) if the settlement amount or award is \$100,001 or more—\$7,000 plus 2% of the settlement amount or award over \$100,000

## 2001 No 1032

Workers Compensation (General) Amendment (Costs) Regulation 2001

Schedule 1 Amendments

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### 2 Other costs for legal services

- (1) Maximum costs for legal services provided in a claim for work injury damages may include (in addition to the costs for legal services referred to in clause 1) the costs set out in the Other Work Injury Costs Table to this clause.
- (2) However, an amount for the fees for senior counsel, or for more than one advocate, are not to be included unless the court so orders.

#### Other Work Injury Costs Table

Nature of costs	Maximum costs
1 Costs associated with a dispute under Part 6 of Chapter 7 of the 1998 Act as to whether the degree of permanent impairment of an injured worker is sufficient for an award of damages (including costs associated with referring the dispute for assessment by an approved medical specialist under Part 7 of that Chapter)	\$500
2 Costs associated with a dispute under section 317 of the 1998 Act as to whether a pre-filing statement is defective	\$200
3 Cost of representation at a mediation under section 318A of the 1998 Act: (a) flat fee (b) additional amount, at the mediator's discretion, if the conference exceeds 2 hours	\$400 up to \$125 per hour (or part of an hour) in excess of 2 hours

Workers Compensation (General) Amendment (Costs) Regulation 2001

Amendments

Schedule 1

Nature of costs	Maximum costs
4 If the matter was referred to mediation and counsel advised before mediation about settlement:	
(a) counsel's fee for advice about settlement	\$500 (separate to the daily rate below)
(b) cost of representation in court, per day, for advocate other than senior counsel	\$1,500
(c) cost of representation in court, per day, for senior counsel	\$2,200
If the matter was not referred to mediation:	
(a) cost of representation in court, per day, for advocate other than senior counsel	\$1,500
(b) cost of representation in court, per day, for senior counsel	\$2,200

BY AUTHORITY