



New South Wales

Motor Accidents Compensation Amendment (Costs) Regulation 2001

under the

Motor Accidents Compensation Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Motor Accidents Compensation Act 1999*.

JOHN DELLA BOSCA, M.L.C.,

Special Minister of State

Explanatory note

The objects of this Regulation are the following:

- (a) to provide that the maximum amount of fees which an insurer is liable to pay in relation to certain health treatment (being treatment to which Part 2 of the *Motor Accidents Compensation Regulation (No 2) 1999 (the Regulation)* applies), which is currently the amount fixed by the *AMA List of Medical Services & Fees* as at 1 November 1999, will in future be fixed by reference to that list as amended or replaced from time to time by the AMA, provided those amendments or replacements are recognized by the Motor Accidents Authority by notice published in the New South Wales Government Gazette (Schedule 1 [1]),
- (b) to make it clear that the Regulation sets out the maximum costs and disbursements recoverable by a legal practitioner for all legal services and other matters provided by the practitioner in respect of a claimant or insurer in a motor accidents matter, other than costs (such as witness expenses) that are specifically excluded by the Regulation (proposed clause 7A in Schedule 1 [2] and Schedule 1 [5]),
- (c) to make a consequential amendment and an amendment of a savings and transitional nature (Schedule 1 [3] and [4]),

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- (d) to provide that, although Schedule 1 to the Regulation (which sets out the costs concerned) generally does not apply in respect of solicitor/client costs if the legal practitioner and the client enter into a conditional costs agreement (within the meaning of Part 11 of the *Legal Profession Act 1987*), the Schedule will apply if the agreement provides for the payment of a premium on the successful outcome of the matter (Schedule 1 [6]),
- (e) to require a claims assessor making an assessment and specifying damages under section 94 of the *Motor Accidents Compensation Act 1999* to have regard, in certain circumstances, to the matters that a costs assessor under the *Legal Profession Act 1987* is required or permitted to consider in assessing what is a fair and reasonable amount of costs (Schedule 1 [7]),
- (f) to provide that a legal or medico-legal cost fixed by Part 3 of the Regulation may be increased by the amount of any GST payable in respect of the service to which the cost relates, and that the cost as so increased is taken to be the cost fixed by that Part (Schedule 1 [8]),
- (g) to make it clear that costs may be charged for more than one stage described in Schedule 1 to the Regulation, and to clarify the intended operation of certain of those stages (Schedule 1 [9] and [10]).

This Regulation is made under the *Motor Accidents Compensation Act 1999* and, in particular, Chapter 6 (Costs) and section 228 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Motor Accidents Compensation Amendment (Costs) Regulation 2001*.

2 Amendment of Motor Accidents Compensation Regulation (No 2) 1999

The *Motor Accidents Compensation Regulation (No 2) 1999* is amended as set out in Schedule 1.

3 Notes

The explanatory note does not form part of this Regulation.

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Schedule 1 Amendments

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(Clause 2)

[1] Clause 5

Omit the clause. Insert instead:

5 Definition of “AMA List”

(1) In this Part:

AMA List means the document called *List of Medical Services & Fees* published by the Australian Medical Association and dated 1 November 1999 as amended or replaced, from time to time, by a document recognised by the Authority in accordance with subclause (2).

(2) The Authority may, by notice published in the Gazette, recognise a document, that has been published by the Australian Medical Association, as an amendment to, or replacement of, the AMA List.

[2] Part 3, Division 1A

Insert before Division 1:

Division 1A Unregulated costs

7A Costs not regulated by this Part

Costs referred to in this Part (clause 15 excepted) do not include any of the following:

- (a) fees for accident investigators’ reports or accident reconstruction reports,
- (b) fees for accountants’ reports,
- (c) fees for reports from health professionals,
- (d) fees for other professional reports relating to treatment or rehabilitation (for example, architects’ reports concerning house modifications),
- (e) fees for interpreter or translation services,
- (f) court fees,

- (g) travel costs and expenses of the claimant in the matter for attendance at medical examinations, the Claims Assessment and Resolution Service or a court,
- (h) witness expenses at the Claims Assessment and Resolution Service or a court.

[3] Clause 8 Application of Division

Omit clause 8 (1). Insert instead:

- (1) This Division is made under section 149 of the 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) legal costs, and
 - (b) costs for matters that are not legal services but are related to proceedings in a motor accidents matter.

[4] Clause 8 (3)

Insert before the note appearing at the end of clause 8 (2):

- (3) The amendments made to this Division by the *Motor Accidents Compensation Amendment (Costs) Regulation 2001* do not affect costs recovered before the commencement of that Regulation or for which a bill of costs was issued before that commencement.

[5] Clause 9 Fixing of maximum costs recoverable by legal practitioners

Omit clause 9 (1). Insert instead:

- (2) The maximum costs for:
 - (a) legal services provided by a legal practitioner to a claimant or to an insurer in any motor accidents matter, and
 - (b) matters that are not legal services but are related to proceedings in a motor accidents matter,are the costs set out in Schedule 1, except as otherwise provided by this Part.

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Schedule 1 Amendments

[6] Clause 11 Contracting out—solicitor/client costs

Omit “(other than a conditional costs agreement within the meaning of Part 11)” from clause 11 (1) (b).

Insert instead “(other than a conditional costs agreement, within the meaning of that Part, that provides for the payment of a premium on the successful outcome of the matter concerned)”.

[7] Clause 15 Claims assessor may assess costs

Insert at the end of clause 15 (3) (b):

, and

- (c) must have regard to the matters set out in sections 208A (1) and 208B of the *Legal Profession Act 1987*.

[8] Part 3, Division 5

Insert after clause 15:

Division 5 Goods and services tax

15A GST may be added to costs

- (1) Despite the other provisions of this Part, a cost fixed by this Part 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 medical practitioner 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 medical practitioner in respect of the legal or other service apart from this clause, or
 - (b) the amount permitted under the New Tax System Price Exploitation law,whichever is the lesser.
- (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.

[9] Schedule 1 Maximum costs and disbursements recoverable by legal practitioners

Insert after clause 1 (2) of the Schedule:

- (3) Costs may be charged for more than one stage described in this Schedule.
- (4) Other than stage 1 in the Tables 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).

[10] Schedule 1, clause 1, Table A

Omit items 5 and 6 of the Table. Insert instead:

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| 5 | If settlement occurs after the issue of a certificate under section 94 of the Act but without the commencement of court proceedings—from the issue of the certificate to finalisation of the matter | The total of the following: <ul style="list-style-type: none"> (a) an amount determined, in accordance with stage 4, by reference to the amount of the assessment as if that assessment were the amount of the settlement referred to in stage 4, (b) 2% of the assessment |
| 6 | If the matter is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from the issue of the certificate under section 94 of the Act to finalisation of the matter | The total of the following: <ul style="list-style-type: none"> (a) an amount determined under stage 5, (b) 2% of the settlement or award |