



Workers Compensation (General) Amendment (Costs in Compensation Matters) Regulation 2003

under the

Workers Compensation Act 1987 and 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 *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

JOHN DELLA BOSCA, M.L.C.,

Special Minister of State

Explanatory note

The object of this Regulation is to amend the *Workers Compensation (General) Regulation 1995* to:

- (a) restrict the circumstances in which more than one medical report in a particular specialty may be admitted in proceedings in a claim for compensation, and
- (b) provide for recovery of certain travelling and accommodation expenses incurred by legal practitioners in connection with attendance at proceedings before the Workers Compensation Commission, and
- (c) provide for some additional costs to be recoverable by legal practitioners or agents acting in a claim for workers compensation, and
- (d) increase the amount of costs that are currently recoverable for some activities or events, and
- (e) make amendments by way of law revision.

This Regulation is made under the *Workers Compensation Act 1987*, including section 280 (the general regulation-making power), and section 337 of the *Workplace Injury Management and Workers Compensation Act 1998*.

2003 No 220

Clause 1 Workers Compensation (General) Amendment (Costs in Compensation Matters) Regulation 2003

Workers Compensation (General) Amendment (Costs in Compensation Matters) Regulation 2003

under the

Workers Compensation Act 1987 and Workplace Injury Management and Workers Compensation Act 1998

1 Name of Regulation

This Regulation is the *Workers Compensation (General) Amendment (Costs in Compensation Matters) Regulation 2003*.

2 Amendment of Workers Compensation (General) Regulation 1995

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

Schedule 1 Amendments

(Clause 2)

[1] Clause 51F Restrictions on number of medical reports that can be admitted

Omit clause 51F (1A).

[2] Clause 51G Permissible updates of medical reports

Omit clause 51G (1A).

[3] Clause 51K Transitional

Insert after clause 51K (2):

- (3) Clauses 51F and 51G (as amended by the *Workers Compensation (General) Amendment (Costs in Compensation Matters) Regulation 2003*) extend to proceedings on a new claim or new claim matter commenced before the commencement of that Regulation, but:
 - (a) do not affect the use of a report in evidence in proceedings if the report was admitted in the proceedings before the commencement of the amendment, and
 - (b) do not prevent the recovery of costs under Schedule 6 for more than one report in a specialty that was obtained before that commencement, or as a result of an appointment made before that commencement.
- (4) In this clause, *new claim* has the same meaning as in Chapter 7 of the 1998 Act.

[4] Clause 148 Transitional provisions

Insert after clause 148 (2):

- (2A) An amendment of Schedule 6 applies only to an activity or event carried out or occurring wholly after the commencement of the amendment.

[5] Schedule 6 Maximum costs—compensation matters

Insert in alphabetical order in clause 1 (1):

teleconference means a conference conducted by way of long-distance communication.

2003 No 220

Workers Compensation (General) Amendment (Costs in Compensation Matters) Regulation 2003

Schedule 1 Amendments

[6] Schedule 6

Insert after clause 1 (2) (j):

Other costs

- (k) For an activity or event described in Column 2 of Part 10 of the table—the cost set out in Column 3 of Part 10 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.

[7] Schedule 6

Insert after clause 2 (2):

- (3) The Registrar may, on application, order that subclause (1) does not apply to costs incurred in respect of a claim or dispute if satisfied that the need for the costs to be incurred could not have been foreseen at the time that costs for the type of activity or event concerned were first incurred in connection with the injury.
- (4) No costs are payable or recoverable in respect of an application for the purpose of subclause (3).

[8] Schedule 6

Omit “or 2B” from clause 3 (1). Insert instead “, 2B or 10”.

[9] Schedule 6

Insert after clause 3 (3):

- (4) Costs specified in Item 10.01 in the table are payable no more than once in respect of any claim.
- (5) Costs specified in Item 10.02 or 10.03 in the table may be payable more than once in respect of any claim.

[10] Schedule 6

Insert after clause 3:

3A Restrictions on travelling and accommodation costs

- (1) For the purpose of calculating costs for travelling referred to in Item 10.02 of the table:
 - (a) costs payable in respect of travel are to be calculated separately for each separate instance of travel (with each separate journey constituting a separate instance of travel), and
 - (b) travel to a place to attend at proceedings before the Commission constitutes a separate journey to the return journey from that place (whether or not the travel results from any adjournment of proceedings), and
 - (c) no costs are payable for any distance travelled in excess of the distance of the shortest practicable route (depending on the mode of travel used), and
 - (d) if travel is undertaken for the purpose of attending at proceedings in respect of more than one claim, the costs for travelling are to be apportioned equally among the claims in respect of which the travel was undertaken.
- (2) If attendance at proceedings before the Commission is in respect of more than one claim, any costs of accommodation in relation to the proceedings, as referred to in Item 10.03 of the table, are to be apportioned equally among the claims concerned.

[11] Schedule 6

Insert at the end of clause 8:

- (2) Nothing in this clause prevents an agent who is a legal practitioner from being entitled to be paid or recover any costs.

2003 No 220

Workers Compensation (General) Amendment (Costs in Compensation Matters) Regulation 2003

Schedule 1 Amendments

[12] Schedule 6

Insert after clause 8:

9 Recovery of certain charges for certain documents from public authorities

Nothing in this Schedule prevents the recovery, as a disbursement, of the fee or charge set for any of the following reports, certificates or searches by the agency concerned in a claim in respect of a particular injury:

- (a) a report from a coroner, the NSW Police or the Roads and Traffic Authority relevant to the claim,
- (b) a land title search from Land and Property Information NSW relevant to the claim,
- (c) a certificate from the Registry of Births, Deaths and Marriages relevant to the claim.

[13] Schedule 6, Compensation Costs Table

Omit Item 1.01. Insert instead:

1.01	Obtaining and reviewing medical reports Note. Part 13A of this Regulation limits the circumstances in which more than 1 medical report in a particular specialty can be admitted in proceedings, and also limits the recovery of the cost of obtaining medical reports that are not admitted in proceedings. Clause 106 (e) of this Regulation provides that costs covered by Part 23 do not include fees for reports from health service providers.	If the matter is finalised by the payment of compensation to the claimant—\$150 per report for the first 2 medical reports, \$100 per report for subsequent medical reports If the matter is not finalised by the payment of compensation—nil	\$600
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[14] Schedule 6, Compensation Costs Table

Omit “\$250” wherever occurring in Column 4 of the matter relating to Items 2.01 and 2.09.

Insert instead “\$500”.

[15] Schedule 6, Compensation Costs Table

Omit Item 2.04. Insert instead:

2.04	Obtaining and reviewing medical reports (other than where Item 1.01 applies) Note. Part 13A of this Regulation limits the circumstances in which more than 1 medical report in a particular specialty can be admitted in proceedings, and also limits the recovery of the cost of obtaining medical reports that are not admitted in proceedings. Clause 106 (e) of this Regulation provides that costs covered by Part 23 do not include fees for reports from health service providers.	\$150 per report for the first 2 medical reports, \$100 per report for subsequent medical reports and \$75 per report for a report supplementing a medical report (up to 2 such supplementary reports)	\$600
2.04A	Where a claim cannot be brought without a witness statement, preparing witness statements	\$100 per hour	\$150

[16] Schedule 6, Compensation Costs Table

Omit “to obtain witness statements or other evidence” from Column 2 of the matter relating to Item 2.05.

Insert instead “to obtain evidence other than witness statements”.

2003 No 220

Workers Compensation (General) Amendment (Costs in Compensation Matters) Regulation 2003

Schedule 1 Amendments

[17] Schedule 6, Compensation Costs Table

Omit Item 2.11. Insert instead:

2.11	Obtaining and reviewing medical reports Note. Part 13A of this Regulation limits the circumstances in which more than 1 medical report in a particular specialty can be admitted in proceedings, and also limits the recovery of the cost of obtaining medical reports that are not admitted in proceedings. Clause 106 (e) of this Regulation provides that costs covered by Part 23 do not include fees for reports from health service providers.	\$150 per report for the first 2 medical reports, \$100 per report for subsequent medical reports and \$75 per report for a report supplementing a medical report (up to 2 such supplementary reports)	\$600
2.11A	Where a claim cannot be defended without a witness statement, preparing witness statements	\$100 per hour	\$150

[18] Schedule 6, Compensation Costs Table

Omit “to obtain witness statements, surveillance information or other evidence” from Column 2 of the matter relating to Item 2.12.

Insert instead “to obtain surveillance information or other evidence other than witness statements”.

[19] Schedule 6, Compensation Costs Table

Omit “make orders” from Column 2 of the matter relating to Item 4.03.

Insert instead “give directions”.

[20] Schedule 6, Compensation Costs Table

Omit “order” wherever occurring in Column 3 of the matter relating to Item 4.03.

Insert instead “direction”.

[21] Schedule 6, Compensation Costs Table

Insert after Item 4.03 in the Compensation Costs Table:

4.03A	Serving a direction by the Commission for the production of documents	\$40 per person served, regardless of the number of directions served on the person	\$200
4.03B	Paying conduct money to person served with direction for the production of documents (being money to meet reasonable expenses of compliance with the direction)	\$40 per person served with direction, regardless of the number of directions served on the person	\$200

[22] Schedule 6, Compensation Costs Table

Omit “an order” wherever occurring in Items 4.04 and 4.05.

Insert instead “a direction”.

[23] Schedule 6, Compensation Costs Table

Insert after Item 4.08:

4.08A	Preparing for a conference (including providing advice to client) in addition to costs provided for by Item 4.08, but only where the matter is settled and terms of settlement are filed in the Commission at least 2 working days before preliminary teleconference is set down to be held	\$250 per hour	\$250
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[24] Schedule 6, Compensation Costs Table

Omit Item 4.11.

2003 No 220

Workers Compensation (General) Amendment (Costs in Compensation Matters) Regulation 2003

Schedule 1 Amendments

[25] Schedule 6, Compensation Costs Table

Omit "\$150" wherever occurring in Columns 3 and 4 of the matter relating to Item 4.12.

Insert instead "\$190".

[26] Schedule 6, Compensation Costs Table

Omit "registration of the agreement" from Column 2 of the matter relating to Item 7.01.

Insert instead "registration of an agreement under section 66A of the 1987 Act".

[27] Schedule 6, Compensation Costs Table

Insert after Item 7.01:

7.02	All work associated with registration of a commutation agreement	\$250	\$250
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[28] Schedule 6, Compensation Costs Table

Insert after Part 9:

Part 10 Other costs

10.01	All work associated with instructing an agent to act on the claim or a matter relating to the claim	\$250 per hour	\$187.50
10.02	Travelling for the purpose of attending at proceedings before the Commission for the purpose of an activity or event referred to in Item 4.09, 4.10, 5.02, 6.02, 6.03, 8.02, 8.04 or 9.01 (not including attendance at a teleconference)	\$0.59 per km (except the first 50 kms)	No maximum

10.03	Costs of accommodation incurred when attending at proceedings before the Commission for the purpose of an activity or event referred to in Item 4.09, 4.10, 5.02, 6.02, 6.03, 8.02, 8.04 or 9.01 (not including attendance at a teleconference) where the place of attendance is more than 50 kms from the practitioner's usual place of practice	\$120 for each night's accommodation	No maximum
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