



# Workers Compensation Amendment (Costs) Regulation 2006

under the

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

JOHN DELLA BOSCA, M.L.C.,  
Minister for Commerce

## Explanatory note

The objects of this Regulation are as follows:

- (a) to establish a new scheme fixing maximum costs for legal or agent services provided to claimants, employers and insurers in or in connection with workers compensation matters,
- (b) to provide that, in workers compensation matters, no amount is recoverable for costs that are not referred to in the regulations,
- (c) to provide that, in workers compensation matters, no amount is recoverable for costs unless the matters have been resolved as set out in substituted Schedule 6,
- (d) to prescribe the provision of clinical notes, records and reports by a health service provider as being within the definition of *costs* in section 332 of the 1998 Act,
- (e) to provide that bills of costs in workers compensation matters are to be given in or to the effect of an approved form,

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- (f) to authorise the Registrar to make costs orders in connection with interim payment directions, disputes concerning past weekly payments and disputes about non-compliance with Chapter 3 of the 1998 Act, where these are dealt with by the Registrar,
- (g) to provide that no appeal lies against a decision of the Registrar of the Workers Compensation Commission arising in proceedings in respect of the assessment of costs under Schedule 6 (but this does not affect appeals already instituted),
- (h) to make other amendments of a minor, consequential, ancillary or transitional nature.

The new scheme (the details of which are set out in substituted Schedule 6) is based on a “lump sum” costs model, rather than an “activity based” costs model. The costs, and the maximum amount of those costs, that are recoverable when a claim or dispute is resolved cover the overall costs in reaching that resolution rather than the individual services that may have been provided.

This Regulation is made under the *Workers Compensation Act 1987*, including section 280 (the general regulation-making power), and under the *Workplace Injury Management and Workers Compensation Act 1998*, including sections 59 (g), 248 (the general regulation-making power), 337, 338, 347 and 376 (6).

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## **Workers Compensation Amendment (Costs) Regulation 2006**

under the

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

### **1 Name of Regulation**

This Regulation is the *Workers Compensation Amendment (Costs) Regulation 2006*.

### **2 Commencement**

This Regulation commences on 1 November 2006.

### **3 Amendment of Workers Compensation Regulation 2003**

The *Workers Compensation Regulation 2003* is amended as set out in Schedule 1.

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**Schedule 1 Amendments**

(Clause 3)

**[1] Clause 81 Definitions**

Insert in alphabetical order:

*health service provider* has the same meaning as in the *Health Care Complaints Act 1993*.

*number* of an item in a Table in Part B of Schedule 6 includes a letter.

**[2] Section 81, note**

Omit the note. Insert instead:

**Note.** Section 332 (2) of the 1998 Act provides that expressions used in Division 1 of Part 8 of Chapter 7 of that Act (and consequently expressions used in this Part) have the same meanings as they have in Part 3.2 of the *Legal Profession Act 2004*, except as provided by section 332 (Definitions) of the 1998 Act. Under section 302 of the *Legal Profession Act 2004*, costs includes fees, charges, disbursements and remuneration.

**[3] Clause 81A**

Insert after clause 81:

**81A Sec 332 of 1998 Act: definition of “costs”**

For the purposes of paragraph (f) of the definition of *costs* in section 332 (1) of the 1998 Act, the costs of providing clinical notes, records and reports by a health service provider are prescribed as costs within that definition.

**[4] Clause 82 Costs not regulated by this Part**

Insert “Costs referred to in clause 82 are recoverable under, and may be regulated by, other legislation (including regulations under the *Legal Profession Act 2004*) or common law principles.” before “Under” in the note.

**[5] Clause 82 (e)**

Insert “(except as provided in item 4 of Part C of Schedule 6)” after “providers”.

**[6] Clause 84 Maximum costs recoverable**

Omit “Commission” from clause 84 (3). Insert instead “Registrar”.

**[7] Clause 84A**

Insert after clause 84:

**84A Maximum costs involving medical or related treatment or certain fees for health service providers**

In workers compensation matters, the costs that are recoverable, and the maximum costs that are recoverable, in respect of costs of a kind referred to in clause 82 or Part C of Schedule 6 are, if section 61 of the 1987 Act or section 339 of the 1998 Act applies in respect of costs of that kind, costs equal to the amount fixed by or by order under the section concerned.

**[8] Clause 85 Special provisions for costs where claim transferred to Commission**

Omit “an election by the worker under clause 225”.

Insert instead “the transfer of the claim to the Commission under clause 225 or 226”.

**[9] Clause 85 (a)**

Omit “when the claimant makes the election”.

Insert instead “of the transfer”.

**[10] Clause 85 (b)**

Omit “election”. Insert instead “transfer”.

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**[11] Clause 85A**

Insert after clause 85:

**85A Costs not recoverable in certain circumstances (workers compensation matters)**

- (1) This clause applies to workers compensation matters.
- (2) No amount is recoverable for costs (including disbursements) that are referred to in neither clause 82 nor Schedule 6.
- (3) No amount is recoverable for costs for any service or matter unless the claim or dispute (or the relevant aspect of the claim or dispute) to which the service or matter relates is resolved or otherwise dealt with in accordance with Schedule 6.
- (4) Despite subclause (3), if an appeal is lodged in respect of a claim or dispute, no amount is recoverable for costs for any service or matter (or the relevant aspect of the claim or dispute) unless the appeal is determined, is withdrawn or lapses.

**[12] Clause 96 Application by client for assessment of practitioner/client or agent/client costs**

Omit “those costs” from clause 96 (1).

Insert instead “so much of those costs as are payable on a practitioner and client basis or an agent and client basis”.

**[13] Clause 97 Application by instructing practitioner or agent for assessment of practitioner/client or agent/client costs**

Omit clause 97 (1). Insert instead:

- (1) A legal practitioner or agent who:
  - (a) retains another legal practitioner or agent to act on behalf of the client, and
  - (b) is given a bill of costs in accordance with this Part by the other legal practitioner or agent,

may apply to the Registrar for an assessment of the whole, or any part of, so much of those costs as are payable on a practitioner and client basis or an agent and client basis.

**[14] Clause 98 Application by billing practitioner or agent for assessment of practitioner/client or agent/client costs**

Omit “those costs” from clause 98 (1).

Insert instead “so much of those costs as are payable on a practitioner and client basis or an agent and client basis”.

**[15] Clause 98 (2) (a) (ii)–(viii)**

Omit clause 98 (2) (a) (ii) and (iii). Insert instead:

- (ii) if relevant, an identification of each general resolution type referred to in Table 2 in Part B of Schedule 6 by reference to the item number and column number in Table 2 of the general resolution type that was attained,
  - (iii) if relevant, an identification of each special resolution type referred to in Table 3 in Part B of Schedule 6 by reference to the item number and column number in Table 3 of the special resolution type that was attained,
  - (iv) if relevant, an identification of the phase of each general resolution type referred to in Table 1 in Part B of Schedule 6 by reference to the item number and column number in Table 1 of the general resolution type that was attained,
  - (v) if relevant, an identification of each additional legal service or other factor referred to in Table 4 in Part B of Schedule 6 by reference to the item number and (where relevant) column number in Table 4 of the legal service or factor,
  - (vi) an identification of each disbursement incurred by reference to a paragraph number in clause 82 or an item number in Part C of Schedule 6,
  - (vii) an identification of each activity, event or stage specified in Schedule 7, by reference to the item number of the activity, event or stage, that was carried out,
  - (viii) the amount sought, and
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**[16] Clause 98A**

Insert after clause 98:

**98A Application for assessment of party/party costs—compensation matters**

- (1) A person who is entitled to receive or who has received costs, in or in connection with a workers compensation matter, as a result of:
  - (a) an order for the payment of an unspecified amount of costs made by a court or the Commission, or
  - (b) an agreement, evidenced in writing by the party liable to pay the costs, for the payment of an unspecified amount of costs,may apply to the Registrar for an assessment of the whole of, or any part of, those costs.
- (2) A person who has paid or is liable to pay costs, in or in connection with a workers compensation matter, as a result of an order or agreement referred to in subclause (1) may apply to the Registrar for an assessment of the whole of, or any part of, those costs after the period of 60 days after the making of the order or agreement.
- (3) 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.

**[17] Clause 99 Application for assessment of party/party costs—work injury damages matters**

Insert “, in or in connection with a work injury damages matter,” after “costs” where firstly occurring in clause 99 (1).

**[18] Clause 101**

Omit the clause. Insert instead:

**101 Persons to be notified of application**

The applicant for assessment is to cause a copy of the application for assessment to be given to:



- (a) each other party and each legal practitioner, agent and other client involved, and
- (b) any other persons to whom the Registrar requires the applicant to give notice of the application, within 7 days after the application is accepted by the Registrar for registration.

**[19] Clause 110 Assessment of costs—costs ordered by court or Commission or subject of agreement**

Insert “or as a result of an agreement referred to in clause 98A (1) (b)” after “Commission” in clause 110 (1).

**[20] Clause 110 (2)**

Insert “or agreement” after “order”.

**[21] Clause 119 Appeal against decision of Registrar as to matter of law**

Insert after clause 119 (4):

- (5) Subclause (1) does not apply to any decision of the Registrar arising in proceedings on an application in respect of the assessment of costs under Schedule 6 as in force at any time before, on or after 1 November 2006, unless:
  - (a) an appeal against the decision has been instituted in accordance with this clause before that date, or
  - (b) the decision is made in or in connection with the reference of a dispute to the Registrar under clause 84 (3).

**[22] Clause 125 Transitional provisions**

Insert “or 226” after “225” in clause 125 (1) (c).

**[23] Clause 125 (3)**

Insert “taking effect before 1 November 2006” after “Schedule 6”.

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**[24] Clause 125A**

Insert after clause 125:

**125A Transitional provisions—amendments made by Workers Compensation Amendment (Costs) Regulation 2006**

**(1) Costs (other than disbursements)—proceedings commenced in Commission before commencement date**

This Part and Schedule 6 as in force before 1 November 2006 continue to apply to and in respect of costs (other than disbursements) where proceedings in the matter were commenced in the Commission before that date.

**(2) Costs (other than disbursements)—proceedings commenced in Commission on or after commencement date**

This Part and Schedule 6 as in force on 1 November 2006 apply to and in respect of costs (other than disbursements) where proceedings in the matter are commenced in the Commission on or after that date (subject to any relevant amendments made after that date).

**(3) Costs (other than disbursements)—matters resolved before commencement date without recourse to Commission**

This Part and Schedule 6 as in force before 1 November 2006 continue to apply to and in respect of costs (other than disbursements) in matters resolved before that date without recourse to the Commission.

**(4) Costs (other than disbursements)—matters resolved on or after commencement date without recourse to Commission**

This Part and Schedule 6 as in force on 1 November 2006 apply to and in respect of costs (other than disbursements) in matters resolved on or after that date (subject to any relevant amendments made after that date) without recourse to the Commission.

**(5) Disbursements incurred before commencement date**

Subject to clauses 45 and 48A, a disbursement incurred before 1 November 2006 is to be reimbursed subject to and in accordance with this Part and Schedule 6 as in force before that date.

- (6) **Disbursements incurred on or after commencement date**  
A disbursement incurred on or after 1 November 2006 is to be reimbursed subject to and in accordance with:
- (a) this Part and Schedule 6 as in force before that date, where proceedings in the matter were commenced in the Commission before that date, or
  - (b) this Part and Schedule 6 as in force on or after that date (subject to any relevant amendments made after that date), where:
    - (i) proceedings in the matter are commenced in the Commission on or after that date, or
    - (ii) the matter is resolved on or after that date without recourse to the Commission.
- (7) **Costs orders applicable to directions or recommendations given or made before commencement date**  
The Registrar may, subject to Schedule 6 as in force before 1 November 2006, make a costs order in connection with:
- (a) the giving of an interim payment direction under Division 2 of Part 5 of Chapter 7 of the 1998 Act, or
  - (b) the making of a recommendation under Division 3 of Part 5 of Chapter 7 of the 1998 Act,
- where the application was made, the direction was given or the recommendation was made before that date, and may do so by making a global order of a general nature.
- (8) **Interpretation**  
For the purposes of this clause, proceedings were or are commenced in the Commission when the initiating application has been accepted by the Registrar for registration.
- (9) For the purposes of this clause, a matter was or is resolved without recourse to the Commission when:
- (a) the insurer notifies the claimant, or the legal practitioner or agent representing the claimant, in writing that the claim or an aspect of the claim has been accepted, or
  - (b) payment has been made to the claimant by the insurer in respect of the claim,
- whichever is the sooner.
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(10) For the purposes of this clause, a matter relating to the insurer's legal representative's or agent's costs was or is resolved without recourse to the Commission when:

- (a) the insurer notifies the claimant, or the legal practitioner or agent representing the claimant, in writing that the insurer disputes liability in respect of the claim or an aspect of the claim, and
- (b) the decision of the insurer to do so is not disputed by the claimant.

Nothing in this subclause affects the application of subclause (9) to the insurer's legal representative's or agent's costs.

**[25] Clauses 126A and 126B**

Insert after clause 126:

**126A Bill of costs to be in approved form**

In workers compensation matters, a bill of costs (as defined by clause 95):

- (a) must, if there is a form approved by the Authority for the purposes of this clause, be given in or to the effect of the approved form, and
- (b) must include relevant particulars of the kind referred to in clause 98 (2) (a) even if the bill is not one to which clause 98 applies.

**126B Costs orders in respect of certain matters**

The Registrar may, subject to Schedule 6, make a costs order in connection with any of the following:

- (a) an application for or the giving of an interim payment direction under Division 2 (Disputes concerning weekly payments or medical expenses) of Part 5 of Chapter 7 of the 1998 Act,
- (b) the determination of a dispute under Division 2A (Disputes concerning past weekly payments) of that Part,

- (c) the making of recommendation under Division 3 (Disputes about non-compliance with Chapter 3) of that Part.

**[26] Schedule 6**

Omit the Schedule. Insert instead:

**Schedule 6 Maximum costs—compensation matters**

(Clause 84)

**Part A Application and operation of Schedule**

**1 Introduction**

- (1) This Schedule applies to:
  - (a) workers compensation claims and disputes that are resolved before proceedings are commenced in the Workers Compensation Commission (the *Commission*) (in certain circumstances), and
  - (b) disputes that are resolved after proceedings have been commenced in the Commission.

**Note.** Clause 125A of the *Workers Compensation Regulation 2003* contains transitional provisions regarding the operation of Schedule 6 as in force before 1 November 2006 and as substituted with effect from that date.

- (2) When a claim or dispute is resolved, legal practitioners or agents representing the parties will need to determine what type of resolution has been reached and when it was resolved. By applying these factors to this Schedule, the legal practitioners or agents will be able to ascertain the costs recoverable.
- (3) If a claim or dispute involves a number of resolution types that are resolved concurrently, or within a specified time frame, the costs recoverable are restricted to the resolution for which the highest amount of costs is payable.

- (4) The recoverable costs will be either:
- (a) a maximum flat, predetermined figure, or
  - (b) in the case of certain “special resolutions”, a maximum amount establishing a range within which the parties may negotiate their costs entitlement.
- (5) If a claim or dispute (other than a claim or dispute resolved by special resolution) includes “additional legal services” or involves “factors” as referred to in Table 4, there may be an additional allowance that can be added to the entitlement to costs.
- (6) Part C determines regulated disbursements. Unregulated disbursements as identified by clause 82 of the *Workers Compensation Regulation 2003*, may be determined by the *Legal Profession Regulation 2005*, or if that Regulation does not apply, then principles of fairness and reasonableness apply. Disbursements that are neither regulated under Part C nor specified in clause 82 of the *Workers Compensation Regulation 2003* are not recoverable, subject to clause 17 of this Part (Recovery of certain charges for certain documents from public authorities).
- (7) This Schedule contains three Parts:
- Part A contains definitions, describes how the Tables operate and in some cases modifies the operation of the Tables.
- Part B contains four tables:
- Table 1 sets out the phases at which claims and disputes may be resolved and the costs that apply for the resolution at each phase.
  - Table 2 sets out the types of resolutions that apply to Table 1, and indicates the level of costs (ie 75% or 100%) that will apply to that resolution type.
  - Table 3 sets out alternate or “special” resolution types and the applicable costs for each party. Tables 1 and 2 do not apply to these “special” resolution types.
  - Table 4 sets out additional legal services and other factors that may result in an increase to the costs claimable under Table 1.
- Part C lists regulated disbursements.

## 2 Definitions

(1) In this Schedule:

**application** means an application for resolution of a claim or dispute in the approved form accepted by the Registrar for registration.

**complying agreement** has the same meaning as in section 66A of the 1987 Act.

**dispute notice** means:

- (a) a notice issued under section 54 of the 1987 Act, or
- (b) a notice issued under section 74 of the 1998 Act, or
- (c) a notice issued under section 287A of the 1998 Act.

**fee order** means an order made by the Authority in relation to fees.

**insurer** includes the Nominal Insurer, a self-insurer and a specialised insurer.

**lead scheme agent** means the agent who is representing the Nominal Insurer on behalf of a number of scheme agents in the conduct of a claim or dispute.

**legal practitioner** means an Australian legal practitioner.

**Nominal Insurer** has the same meaning as in the 1987 Act.

**resolved**—see subclauses (2) and (3).

**respondent** means a person who is a party to a dispute other than the applicant.

**scheme agent** has the same meaning as in the 1987 Act.

**self-insurer** has the same meaning as in the 1987 Act.

**specialised insurer** has the same meaning as in the 1987 Act.

**Table** means a Table in Part B.

**teleconference** means a telephone conference conducted by the Registrar or the Commission.

**the 1926 Act** means the *Workers' Compensation Act 1926*.

(2) **Meaning of “resolved”—claimant**

For the purposes of this Schedule, a claim or dispute is resolved, in relation to a claimant, if:

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- (a) the claim or dispute is wholly or partly resolved in the claimant's favour, or
- (b) an application brought by an insurer in relation to the claim or dispute is successfully defended in whole or in part,

but does not include a matter discontinued, withdrawn, dismissed or struck out without any resolution referred to in paragraph (a) or (b) unless otherwise ordered or certified for the purposes of cost recovery by the Commission or the Registrar.

(3) **Meaning of "resolved"—insurer**

For the purposes of this Schedule, a claim or dispute involving a claimant is resolved, in relation to an insurer, if:

- (a) the claim or dispute is concluded, or
- (b) an application brought by the insurer in respect of the claim or dispute is concluded,

unless otherwise ordered or certified for the purposes of cost recovery by the Commission or the Registrar.

(4) **Meaning of other compensation claim or dispute in Table 1**

A reference in Table 1 to an *other compensation claim or dispute* (or *other compensation dispute*) is a reference to a claim or dispute (or a dispute) concerning compensation to which the resolutions in items 5–16 of Table 2 relate.

**Note.** The purpose of this subclause is to make it clear that the successive use of the word "other" in Table 1 does not result in successive narrowing of the terms used.

(5) **Notes**

Despite clause 3 (2) of the *Workers Compensation Regulation 2003*, notes included in this Schedule form part of this Regulation.

### 3 Overall application of Schedule

- (1) This Schedule is to be read and applied in its entirety, and accordingly this Schedule applies in relation to costs in accordance with:
  - (a) the descriptions contained in Tables 1 to 4, and
  - (b) the notes in Part B, and
  - (c) Parts A and C.



- (2) This Schedule prescribes the maximum costs recoverable in respect of work carried out to achieve the resolution types described in Tables 2 and 3 for:
- (a) resolving claims and disputes before an application is accepted by the Registrar for registration, or
  - (b) resolving disputes after an application is accepted by the Registrar for registration.

#### 4 General application of Tables

(1) **General resolution types**

The maximum amount of costs for the resolution of a claim or dispute as described in Table 2 are the amounts set out in:

- column 1 or 2 of Table 1 for the claimant, and
- column 3 or 4 of Table 1 for the insurer,

for the applicable phase.

However:

- (a) that maximum amount may be decreased by an amount already received under an entitlement from Table 3 in circumstances specified in that Table, and
- (b) that maximum amount may be increased by an entitlement under Table 4 in circumstances specified in that Table.

(2) **Special resolution types**

The maximum amount of costs for the resolution of a claim or dispute as described in Table 3 are the amounts set out in that Table.

(3) **Additional legal services or other factors—general**

The maximum amount of costs for an additional legal service or other factor in respect of a resolution as described in items 1–5 of Table 4 is up to the amount or percentage of costs set out in:

- columns 1 and 3 of items 1–4 of Table 4 for the claimant, and
- columns 2 and 4 of items 1–4 of Table 4 for the insurer, and

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- column 5 of item 5 of Table 4 for the claimant, and
- column 6 of item 5 of Table 4 for the insurer.

Accordingly and for the avoidance of doubt:

- (a) an entitlement to costs under item 1, 2 or 3 of Table 4 as certified by the Commission or the Registrar may be added to the costs recoverable under item B, D, E or F of Table 1, and
  - (b) an entitlement to a percentage increase in costs ascertained under item 4 or 5 of Table 4 and as certified by the Commission or the Registrar applies to increase the costs claimable under item D, E or F of Table 1, and
  - (c) an entitlement to costs under item 1, 2 or 3 of Table 4 as certified by the Commission or the Registrar is recoverable by an insurer in respect of a resolution referred to in item B of Table 1 even though no costs may be recoverable by the insurer under that item.
- (4) **Additional legal services or other factors—multiple respondents or lead scheme agent**

The maximum costs for an additional legal service or other factor as described in items 6 and 7 of Table 4 are up to the percentage applicable for the claimant and insurer as specified.

Accordingly and for the avoidance of doubt, an entitlement to a percentage increase in costs ascertained under items 6 and 7 of Table 4 applies to increase the costs claimable under items A to F of Table 1.

- (5) **Table 4 costs not separately claimable**  
Except as referred to in subclause (3) (c), costs specified in Table 4 are recoverable only if costs as described in Table 1 are also recoverable.

#### 5 When Table 1 costs recoverable

Costs specified in clause 4 of this Part are recoverable only on resolution of the claim or dispute concerned.

**6 Special provisions for Table 1 costs—dispute about permanent impairment and pain and suffering**

- (1) An exception to the standard method of determining the appropriate Table 1 costs for a claimant and an insurer based upon the meaning of “resolved” under clause 2 of this Part and the types of resolutions set out in Table 2 applies, where:
- (a) a claimant has made an application to the Commission to resolve a dispute about permanent impairment and pain and suffering pursuant to sections 66 and 67 of the 1987 Act, and
  - (b) the section 67 claim has been substantiated by:
    - (i) a report, from a medical specialist with qualifications and training relevant to the body system being assessed who has been trained in the WorkCover Guidelines, to the effect that the claimant has sustained 10% or more whole person impairment where:
      - the injury was sustained on or after 1 January 2002, and
      - that report has been served on the insurer, or
    - (ii) a medical report to the effect that the claimant has sustained a loss or losses of 10% or more of the maximum amount referred to in section 66 (1) of the 1987 Act where:
      - the injury was sustained before 1 January 2002, and
      - that report has been served on the insurer, and
  - (c) the medical assessment certificate issued by an approved medical specialist or a Medical Appeal Panel is to the effect that the degree of whole person impairment of the claimant is below 10% or the loss or losses are not 10% or more of the maximum amount referred to in section 66 (1) of the 1987 Act.

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- (2) In a case to which subclause (1) applies:
  - (a) the claimant is entitled to maximum costs in the amount of \$4,000, and
  - (b) the insurer is entitled to maximum costs in the amount of \$1,875.

**Note.** The deduction in respect of an advice to an insurer under item F of Table 3 applies to this costs provision.

#### **7 When Table 3 costs recoverable, and reduction of subsequent Table 1 costs**

##### **(1) When Table 3 costs recoverable**

Costs specified in Table 3 as “Special Resolution Types” are recoverable only:

- (a) on resolution of the dispute in respect of items A, B and C of that Table, or
- (b) on registration of the agreement with the Commission in respect of item D of that Table, or
- (c) when an existing decision of the insurer has been varied as a consequence of a legal service, where it was reasonable to carry out that service in respect of item E of that Table, or
- (d) when written advice has been provided to the insurer in respect of item F of that Table, or
- (e) when independent legal advice has been given to a claimant in respect of a complying agreement proposed by an insurer in respect of item G of that Table.

##### **(2) Reduction of subsequent Table 1 costs**

The costs referred to in subclause (1) are not payable or recoverable in conjunction with any other items in this Schedule (with the exception of disbursements under Part C or disbursements specified in clause 82 of the *Workers Compensation Regulation 2003*) with the result that:

- (a) if costs have been recovered in respect of item A, B or C of Table 3 and costs subsequently become recoverable under Table 1 in respect of a resolution that relates to the same issue, the entitlement to costs under Table 1 is to be reduced by any payment already made in respect of item A, B or C of Table 3, and

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- (b) if costs have been recovered in respect of item E of Table 3 and costs subsequently become payable under Table 1 in respect of a resolution that relates to the same issue, the entitlement to costs under Table 1 is to be reduced by any payment made in respect of item E of Table 3, and
  - (c) if costs have been recovered in respect of item F of Table 3 and costs subsequently become payable under Table 1 in respect of a claim or dispute relating to the issue addressed in the written advice, the entitlement to costs under Table 1 is to be reduced by any payment made in respect of item F of Table 3 (but the maximum reduction is the amount paid for the first such advice), and
  - (d) if costs have been recovered in respect of item G of Table 3 and costs subsequently become payable under Table 1 in respect of a claim or dispute relating to the issue addressed in the complying agreement, the entitlement to costs under Table 1 is to be reduced by a payment made in respect of item G of Table 3.
- (3) Subclause (2) (c) does not apply where:
- (a) payment was for advice given on issues that are not in dispute and thus are not part of the Table 1 resolution, in which case there is to be no deduction, or
  - (b) a period of more than 12 months has elapsed between the giving of the advice and the Table 1 resolution, or
  - (c) the Registrar, on application, determines that the need for the costs to be incurred for the Table 1 resolution could not have been foreseen at the time that costs for the advice were first incurred.

No costs are payable or recoverable in respect of an application for the purposes of paragraph (c).

- (4) Subclause (2) (d) does not apply where a period of more than 12 months has elapsed between the giving of the advice in respect of the complying agreement and the Table 1 resolution.

**8 Maximum payable where more than one resolution type**

- (1) Subject to clause 7 of this Part, where the resolution includes more than one resolution type in Table 2, or includes resolution types in Tables 2 and 3, the following provisions apply:
  - (a) in relation to a claimant:
    - (i) if all resolutions fall within column 1 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
    - (ii) if all resolutions fall within column 2 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
    - (iii) if resolutions fall within both columns 1 and 2 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
    - (iv) if resolutions fall within both Tables 1 and 3, the single highest amount claimable for a resolution is payable, once only,
  - (b) in relation to an insurer:
    - (i) if all resolutions fall within column 3 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
    - (ii) if all resolutions fall within column 4 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
    - (iii) if resolutions fall within both columns 3 and 4 of Table 1, the single highest amount claimable for a resolution is payable, once only, or
    - (iv) if resolutions fall within both Tables 1 and 3, the single highest amount claimable for a resolution is payable, once only.
- (2) Where subclause (1) applies and additional legal services or other factors set out in Table 4 are also claimable, the Table 4 items are payable up to the highest rate claimable, once only.

**9 Maximum payable where more than one claim or dispute**

- (1) If more than one claim or dispute is resolved in respect of a particular injury, the maximum costs recoverable, regardless of how many resolution types there are, is the maximum as set out in clause 8 of this Part.

- (2) Subclause (1) does not apply if:
- (a) a period of more than 12 months has elapsed between each successive resolution in respect of the injury, or
  - (b) the Commission or the Registrar, on application, orders that the resolutions are to be treated as separate resolutions for the purposes of the calculation or assessment of costs.

No costs are payable or recoverable in respect of an application for the purposes of paragraph (b).

**10 Maximum payable covers all work**

The costs allowed under:

- (a) Table 1 in column 1, 2, 3 or 4 for each type of general resolution, and
- (b) Table 3 for each type of special resolution, and
- (c) Table 4 for additional legal services or other factors,

cover all work performed in the course of the claim, dispute, legal service or factor. This includes but is not limited to conferences, seeking a review of the claim, completing all necessary preparation and documentation, appearances and advocacy, executing and lodging settlement documents, reviewing the determination of the Commission and concluding attendances.

**11 Determination of maximum payable where an upper limit is set**

If Table 3 or 4 or Part C sets an upper limit for the maximum payable by way of any costs, the maximum payable is to be an amount determined, within the range from and including nil to and including the upper limit, by reference to:

- (a) any applicable practice direction or Registrar's guideline, and
- (b) subject to paragraph (a), the nature and extent of the service performed.

**12 Table 2—resolution after teleconference and before further attendance**

Where the Commission or the Registrar issues a determination in respect of a resolution type in Table 2, following the initial teleconference and before any further attendances, the costs in relation to that resolution fall within item D of Table 1.

**13 Table 3—orders**

For the purposes of Table 3, the Commission or the Registrar may order declaring that a particular proceeding is in respect of the resolution of “other proceedings” as referred to in item C of that Table.

**14 Special provisions for Table 1 and Table 3 costs—legal advice to claimant on complying agreement**

- (1) Costs are not recoverable under item A of Table 1 in respect of independent legal advice given to a claimant in respect of a complying agreement proposed by an insurer, if the only service provided to the claimant relates to the giving of that advice.
- (2) Costs are not recoverable under item G of Table 3 in respect of independent legal advice given to a claimant in respect of a complying agreement proposed by an insurer, unless the only service provided to the claimant relates to the giving of that advice.

**Note.** Section 66A (6) of the 1987 Act provides that nothing in section 66A prevents a complying agreement from containing provision as to the payment of costs. Accordingly, a complying agreement may provide for the payment of costs, but the maximum recoverable is subject to Part B.

**15 Country/interstate loadings—Part C**

Country or interstate loadings (including travel and accommodation expenses) are payable in accordance with clause 3 or 4 (as relevant) of Schedule 1 to the *Motor Accidents Compensation Regulation 2005*, and the provisions of those clauses apply, with any necessary modifications and with any modifications contained in a practice direction or Registrar’s guideline, for that purpose.



**16 Certain agents not entitled to costs**

- (1) No amount is recoverable for costs by an agent who is not an agent as defined in section 356 (6) of the 1998 Act, with the result that the agent is not entitled to be paid or recover any amount for the service or matter concerned.
- (2) Nothing in this clause prevents an agent who is a legal practitioner from being entitled to be paid or recover any costs.

**17 Recovery of certain charges for certain documents from public authorities**

Nothing in the *Workers Compensation Regulation 2003* (including this Schedule) prevents the recovery, as a disbursement, of the fee or charge set for any of the following reports, certificates, searches or services 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,
- (d) an application under the *Freedom of Information Act 1989* relevant to the claim,
- (e) a company or business name search from the Australian Securities and Investments Commission relevant to the claim.

**18 Costs unreasonably incurred**

Where the Commission is satisfied that a party's costs have been unreasonably incurred in accordance with section 342 of the 1998 Act, the maximum amount of recoverable costs, if any, is restricted to the costs recoverable in the phase where the circumstances referred to in section 342 (2) of that Act arose and is not to include any further costs.

## Part B Costs

**Table 1 General resolution types—costs payable**

Item	General resolution (for general resolution types refer to Table 2)	Claimant		Insurer	
		Column 1 75%	Column 2 100%	Column 3 75%	Column 4 100%
A	Lump sum compensation claim or dispute resolved <ul style="list-style-type: none"> <li>before application accepted by the Registrar</li> </ul> (Table 2—items 1–4—Claimant; item 2 only—Insurer)	\$2,475	\$3,275	\$1,575	N/A
B	Lump sum compensation claim or dispute resolved <ul style="list-style-type: none"> <li>after application accepted by the Registrar and up to and including the issue of a Certificate of Determination</li> </ul> (Table 2—items 1–4—Claimant; item 2 only—Insurer)	\$3,525	\$4,675 (or \$4,000 where clause 6 of Part A applies)	\$2,550 (or \$1,875 where clause 6 of Part A applies)	N/A
C	Other compensation claim or dispute resolved <ul style="list-style-type: none"> <li>after dispute notice issued and before application accepted by the Registrar, or</li> <li>before application accepted by the Registrar in relation to a claim for compensation in respect of the death of a worker</li> </ul> (Table 2—items 5–16)	\$2,860	\$3,785	\$2,345	\$3,100

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Item	General resolution (for general resolution types refer to Table 2)	Claimant		Insurer	
		Column 1 75%	Column 2 100%	Column 3 75%	Column 4 100%
D	Other compensation dispute resolved <ul style="list-style-type: none"> <li>after application accepted by the Registrar, and up to and including the initial teleconference including consequential settlement attendances (Table 2—items 5–16)</li> </ul>	\$3,870	\$5,135	\$3,355	\$4,450
E	Other compensation dispute resolved <ul style="list-style-type: none"> <li>after initial teleconference and up to and including conciliation conference including consequential settlement attendances (Table 2—items 5–16)</li> </ul>	\$4,250	\$5,645	\$3,665	\$4,860
F	Other compensation dispute resolved <ul style="list-style-type: none"> <li>following conciliation conference and up to and including arbitration hearing (Table 2—items 5–16)</li> </ul>	\$4,615	\$6,125	\$3,935	\$5,225

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**Table 2 General resolution types—applicable rate**

<b>Item</b>	<b>General resolution types</b>	<b>Column 1 75%</b>	<b>Column 2 100%</b>
	<b>Lump sum compensation resolutions</b>		
1	Lump sum compensation for permanent impairment under section 66 of the 1987 Act (excluding any claim for pain and suffering under section 67 of that Act) where: <ul style="list-style-type: none"> <li>the extent of impairment is the only issue, or</li> <li>a dispute notice has not been issued</li> </ul> (Claimant only—item A or B of Table 1)	75%	—
2	Lump sum compensation for pain and suffering under section 67 of the 1987 Act (item A or B of Table 1)	75%	—
3	Lump sum compensation under section 16 of the 1926 Act where: <ul style="list-style-type: none"> <li>the extent of impairment (or loss) is the only issue, or</li> <li>a dispute notice has not been issued</li> </ul> (Claimant only—item A or B of Table 1)	75%	—
4	Lump sum compensation for permanent impairment under section 66 of the 1987 Act and for pain and suffering under section 67 of that Act where: <ul style="list-style-type: none"> <li>the extent of impairment and pain and suffering are the only issues, or</li> <li>a dispute notice has not been issued</li> </ul> (Claimant only—item A or B of Table 1)	—	100%
	<b>Other compensation resolutions</b>		
5	Lump sum compensation for permanent impairment where: <ul style="list-style-type: none"> <li>a dispute notice has been issued, or</li> <li>the matter is referred by the Registrar for determination by an arbitrator</li> </ul> (Item C, D, E or F of Table 1)	—	100%

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Item	General resolution types	Column 1 75%	Column 2 100%
6	Weekly payments compensation for a period not exceeding 12 weeks in total, excluding interim payment directions under Chapter 7, Part 5, of the 1998 Act (Item C, D, E or F of Table 1)	75%	—
7	Weekly payments compensation for a period exceeding 12 weeks in total, being a period in respect of which an interim payment direction under Chapter 7, Part 5, of the 1998 Act has not been made (Item C, D, E or F of Table 1)	—	100%
8	Termination or reduction of weekly payments compensation (on a review under section 55 of the 1987 Act) (Insurer only—item C, D, E or F of Table 1)	—	100%
9	Successfully defending an application to terminate or reduce weekly payments compensation (Claimant only—item C, D, E or F of Table 1)	—	100%
10	Increase in weekly payments compensation (on a review under section 55 of the 1987 Act) (Claimant only—item C, D, E or F of Table 1)	—	100%
11	Defending an application to increase weekly payments compensation (on a review under section 55 of the 1987 Act) (Insurer only—item C, D, E or F of Table 1)	—	100%
12	Medical expenses compensation not exceeding \$7,500, excluding interim payment directions under Chapter 7, Part 5, of the 1998 Act (Item C, D, E or F of Table 1)	75%	—
13	Medical expenses compensation exceeding \$7,500 (Item C, D, E or F of Table 1)	—	100%

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Item	General resolution types	Column 1 75%	Column 2 100%
14	Compensation in respect of the death of a worker under Part 3, Division 1, of the 1987 Act where: <ul style="list-style-type: none"> <li>• the respondent admits liability, and</li> <li>• there is no dispute regarding dependency (Item C of Table 1)</li> </ul>	75%	—
15	Compensation in respect of the death of a worker under Part 3, Division 1, of the 1987 Act where: <ul style="list-style-type: none"> <li>• the respondent disputes liability, and/or</li> <li>• the respondent disputes dependency (Item C, D, E or F of Table 1)</li> </ul>	—	100%
16	Reduction in liability of employer to reimburse the WorkCover Authority Fund under section 145 of the 1987 Act by determination of the Commission or agreement after referral (Item D, E or F of Table 1)	75%	—

**Table 3 Special resolution types—costs payable**

Item	Special resolution types	Application of behalf of claimant		Application of behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
A	<b>Interim payment dispute resolved</b>				
	1 Dispute resolved by direction or agreement, after application accepted by the Registrar	\$1,650	\$1,400	N/A	N/A

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Item	Special resolution types	Application of behalf of claimant		Application of behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
	2 If further dispute about the same claim is resolved by direction or agreement, after application accepted by the Registrar	\$550	\$550	N/A	N/A
B	<b>Workplace injury management dispute resolved</b>				
	1 Dispute resolved by direction, recommendation, determination or agreement, after application accepted by the Registrar	\$1,925	\$1,675	\$1,925	\$1,675
	2 If further dispute about the same claim is resolved by direction, recommendation, determination or agreement, after application accepted by the Registrar	\$550	\$550	\$550	\$550
C	<b>Resolution of other proceedings</b>				
	1 As ordered or certified by the Commission or the Registrar	Upper limit of \$1,100	Upper limit of \$1,100	Upper limit of \$1,100	Upper limit of \$1,100

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Item	Special resolution types	Application of behalf of claimant		Application of behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
D	<b>Registration of commutation agreement</b>				
	1 Where agreement approved by WorkCover Authority and registered with the Registrar (including all preparation and documentation in approved form in accordance with Rules	\$1,500	\$1,500	\$1,500	\$1,500
<b>Item</b>	<b>Special resolution types</b>	<b>Claimant</b>			
E	<b>Legal service to claimant before dispute notice</b>				
	1 Where an insurer's decision on the existing entitlement to weekly payments is varied to the worker's benefit by an increase of 5% or more in weekly payments as a consequence of a legal service, where it was reasonable to carry out that service	Upper limit of \$1,100			



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Item	Special resolution types	Insurer
F	<b>Written advice provided at the request of the insurer</b>	
	1 Where: <ul style="list-style-type: none"> <li>• the legal advice to an insurer is the provision of written advice at the request of the insurer before the issue of a dispute notice, and</li> <li>• costs are not recoverable under Table 1 in respect of the claim or dispute the subject of that advice</li> </ul> (subject to clause 7 of Part A)	Upper limit of \$825
Item	Special resolution types	Claimant
G	<b>Advice in respect of complying agreement</b>	
	1 Where independent legal advice given to a claimant in respect of a complying agreement proposed by an insurer under section 66A of the 1987 Act (subject to clause 7 of Part A)	\$825

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**Table 4 Additional legal services or other factors**

Item	Additional legal services or other factors	Application on behalf of claimant		Application on behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
1	<b>Appeal against an arbitral decision to Presidential member</b>				
	<p>Appeal resolved by decision of Presidential member</p> <p>Costs to be as ordered or certified by the Presidential member and may encompass all parties' costs</p>	<p>(a) Nil if unsuccessful</p> <p>(b) Upper limit of \$2,200 if successful</p>	Upper limit of \$2,200	Upper limit of \$2,200	<p>(a) Nil if unsuccessful</p> <p>(b) Upper limit of \$2,200 if successful</p>
2	<b>Question of law determined by the President</b>				
	<p>Matter resolved by the decision of the President</p> <p>Costs to be as ordered or certified by the President and may encompass all parties' costs</p>	Upper limit of \$2,200	Upper limit of \$2,200	Upper limit of \$2,200	Upper limit of \$2,200

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Item	Additional legal services or other factors	Application on behalf of claimant		Application on behalf of insurer	
		Column 1 Claimant	Column 2 Insurer	Column 3 Claimant	Column 4 Insurer
3	<b>Appeal against a medical assessment under Chapter 7, Part 7, of the 1998 Act</b>				
	Appeal resolved by the decision of Appeal Panel  Costs to be as ordered or certified by the Commission or the Registrar and may encompass all parties' costs	(a) Nil if result is not more favourable  (b) Upper limit of \$1,100 if result is more favourable	Upper limit of \$1,100	Upper limit of \$1,100	(a) Nil if result is not more favourable  (b) Upper limit of \$1,100 if result is more favourable
4	<b>Dispute determined or otherwise resolved after proceedings have been commenced in the Commission</b>				
	If: <ul style="list-style-type: none"> <li>the Commission or the Registrar certifies the matter as complex, and</li> <li>neither item 6 nor 7 of this Table also applies</li> </ul>	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1	Percentage increase—upper limit of 30% of costs at item D, E or F of Table 1

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Item	Additional legal services or other factors	Column 5 Claimant	Column 6 Insurer
5	<p><b>Dispute determined or otherwise resolved after proceedings have been commenced in the Commission</b></p>		
	<p>If:</p> <ul style="list-style-type: none"> <li>• the Commission or the Registrar certifies the matter as complex, and</li> <li>• item 6 or 7 of this Table would otherwise have application</li> </ul>	<p>Percentage increase—upper limit of 45% of costs at item D, E or F of Table 1</p>	<p>Percentage increase—upper limit of 45% of costs at item D, E or F of Table 1</p>
Item	Additional legal services or other factors	Claimant	
6	<p><b>Costs associated with multiple respondents</b></p>		
	<p>If the claim or dispute is resolved by an award or settlement apportioned between more than one respondent</p> <p><b>Note.</b> This allowance does not apply to any resolution that has an increase in fees under item 4 or 5 of this Table.</p>	<p>Percentage increase—upper limit of 30% of costs payable under Table 1 and items 1, 2 and 3 of this Table</p> <p><b>Note.</b> The increase does not apply for each additional respondent, and accordingly 30% is the maximum allowable increase notwithstanding the number of respondents.</p>	

Item	Additional legal services or other factors	Insurer
7	<b>Costs associated with acting for lead scheme agent</b>	
	<p>If the claim or dispute is resolved by a scheme agent on behalf of multiple scheme agents</p> <p><b>Note.</b> This allowance does not apply to any resolution that has an increase in fees under item 4 or 5 of this Table.</p>	<p>(a) Lead scheme agent: percentage increase—upper limit of 30% of costs payable under Table 1 and items 1, 2 and 3 of this Table</p> <p>(b) Other agents: no costs recoverable</p> <p><b>Note.</b> The increase referred to in paragraph (a) does not apply for each additional scheme agent, and accordingly 30% is the maximum allowable increase notwithstanding the number of scheme agents who are parties to the resolution.</p>

### Part C Regulated disbursements

Item	Disbursement	Applicable provisions
1	Country/interstate loadings (including travel and accommodation expenses)	<p>Payable in accordance with the <i>Motor Accidents Compensation Regulation 2005</i>, Schedule 1, clause 3 or 4 (as relevant).</p> <p><b>Note.</b> Clause 15 of Part A applies for this purpose.</p>
2	Conduct money to comply with notice for the production of documents	<p>Where the producer is a party other than the worker—nil payable</p> <p>Where the producer is the worker—an amount sufficient to meet the reasonable expenses of complying with the notice is payable</p>

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Item	Disbursement	Applicable provisions
3	Conduct money to comply with direction for the production of documents	<p>An amount sufficient to meet the reasonable expenses of complying with the direction is payable</p> <p>In the case of medical practitioners, the term “sufficient to meet the reasonable expenses” is an amount calculated in accordance with the AMA Revised Recommended Scale as in force from time to time</p> <p>In the case of production by a government agency—the standard rate applied by that agency is payable</p>
4	Treating health service provider’s report	<p>If a claim or dispute is resolved whether before or after proceedings commenced:</p> <p>Claimant:</p> <ul style="list-style-type: none"><li>(a) nil fee payable, unless paragraph (b) applies, or</li><li>(b) fee allowed in accordance with any applicable fee order where:<ul style="list-style-type: none"><li>(i) request for report made to insurer, and</li><li>(ii) either:<ul style="list-style-type: none"><li>• insurer does not provide report within 14 days, or</li><li>• report supplied by insurer does not address the report requirements of the claimant, and</li></ul></li><li>(iii) report is served on insurer</li></ul></li></ul> <p>Insurer:</p> <ul style="list-style-type: none"><li>(a) fee allowed in accordance with any applicable fee order</li></ul>

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Item	Disbursement	Applicable provisions
5	<p>Report of independent medical examination by an appropriately qualified and experienced medical practitioner in accordance with WorkCover Guidelines</p> <p>Fee allowed in accordance with any applicable fee order where paragraph (a) or (b) opposite applies</p> <p><b>Note.</b> A supplementary report that complies with clause 43AA of the <i>Workers Compensation Regulation 2003</i> gives rise to a further entitlement to costs under this item, if the supplementary report otherwise satisfies the provisions of this item.</p>	<p>(a) If a claim or dispute is resolved before proceedings are commenced—a report of the kind referred to in clause 43 has been served on the other party</p> <p>(b) If a dispute is resolved after proceedings are commenced—a report of the kind referred to in clause 43 has been admitted in the proceedings or disclosed to an approved medical specialist</p>

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Item	Disbursement	Applicable provisions
6	Treating health service provider's clinical notes and records	<p>If a claim or dispute is resolved whether before or after proceedings commenced:</p> <p>Claimant:</p> <ul style="list-style-type: none"><li>(a) nil fee payable, unless paragraph (b) applies, or</li><li>(b) payment in accordance with AMA Revised Recommended Scale as in force from time to time or any applicable fee order (the latter to prevail over the former) where:<ul style="list-style-type: none"><li>(i) request made to insurer, and</li><li>(ii) insurer does not provide within 7 days, and</li><li>(iii) clinical notes and records are served on insurer</li></ul></li></ul> <p>Insurer:</p> <ul style="list-style-type: none"><li>(a) nil fee payable if clinical notes and records are served by claimant under paragraph (b) above, or</li><li>(b) otherwise, payment in accordance with AMA Revised Recommended Scale as in force from time to time or any applicable fee order (the latter to prevail over the former)</li></ul>
7	Fee for the provision of independent financial advice by a qualified financial adviser for a commutation by agreement that is approved by the Authority and registered with the Commission	Upper limit of \$1,000, on the production of account or receipt

BY AUTHORITY