



New South Wales

Motor Accidents Compensation Amendment (Costs and Fees) Regulation 2008

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.,
Minister Assisting the Minister for Finance

Explanatory note

The object of this Regulation is to amend the *Motor Accidents Compensation Regulation 2005* to increase:

- (a) the maximum costs for legal services provided by legal practitioners to claimants or to insurers in motor accidents matters and for matters that are not legal services but are related to proceedings in motor accidents matters (the increase, however, does not apply to costs that are charged on an ad valorem basis), and
- (b) the maximum fees for the provision of medical reports, and appearances as witnesses, by medical practitioners in relation to motor accidents matters.

The increases are generally in line with movements in the Consumer Price Index.

This Regulation is made under the *Motor Accidents Compensation Act 1999*, including Part 3.4 (Medical assessment) and sections 72, 82, 94, 96, 104, 149, 150 and 228 (the general regulation-making power).

2008 No 135

Clause 1 Motor Accidents Compensation Amendment (Costs and Fees) Regulation
2008

Motor Accidents Compensation Amendment (Costs and Fees) Regulation 2008

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1 Name of Regulation

This Regulation is the *Motor Accidents Compensation Amendment (Costs and Fees) Regulation 2008*.

2 Amendment of Motor Accidents Compensation Regulation 2005

The *Motor Accidents Compensation Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 2)

Schedules 1 and 2

Omit the Schedules. Insert instead:

Schedule 1 Maximum costs for legal services

(Clause 9 (1))

1 Costs determined by reference to certain stages in the matter

- (1) The maximum costs for legal services provided for a stage of a motor accidents matter set out in Column 1 of 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 the claims assessment is issued under section 94 of the Act, the costs are those set out in 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 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).

Table A

Column 1		Column 2
Stage		Costs
1	For assistance in completing an accident notification form	Nil (except, in respect of a legal practitioner acting for a claimant, in so far as the assistance forms part of stage 2)

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Schedule 1 Amendment

Column 1		Column 2	
Stage		Costs	
2	From the acceptance of the retainer to the preparation and service of a notice of claim under section 72 of the Act (including the provision of all relevant particulars about the claim to the insurer, even if those particulars are requested after the claim is served)	(a)	in the case of a legal practitioner acting for a claimant—\$260
		(b)	in the case of a legal practitioner acting for an insurer—nil
3	From service of the notice of claim under section 72 of the Act to the preparation and service of a response to the insurer's offer of settlement under section 82 of the Act	(a)	in the case of a legal practitioner acting for a claimant—\$380
		(b)	in the case of a legal practitioner acting for an insurer—nil
4	If settlement occurs without the issue of a certificate under section 94 of the Act—from service of the response to the insurer's offer of settlement under section 82 of the Act to finalisation of the matter		In addition to the \$640 specified for stages 2 and 3 (if chargeable):
		(a)	if the settlement amount is \$20,000 or less and the insurer wholly admitted liability for the claim—\$640
		(b)	if the settlement amount is \$20,000 or less and the insurer denied liability for up to 25% of 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—\$640 plus 12% of every dollar of the settlement amount over \$20,000

Column 1	Column 2
Stage	Costs
	(d) if the settlement amount is more than \$20,000 but less than \$50,001 and the insurer denied liability for up to 25% of the claim—\$2,400 plus 12% of every dollar 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—\$4,800 plus 10% of every dollar 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 denied liability for up to 25% of the claim—\$6,600 plus 10% of every dollar of the settlement amount over \$50,000
	(g) if the settlement amount is \$100,001 or more and the insurer wholly admitted liability for the claim—\$10,600 plus 2% of every dollar of the settlement amount over \$100,000
	(h) if the settlement amount is \$100,001 or more and the insurer denied liability for up to 25% of the claim—\$12,400 plus 2% of every dollar of the settlement amount over \$100,000

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Column 1	Column 2
Stage	Costs
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: (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: (a) an amount determined under stage 5, (b) 2% of the settlement or award

Table B

Column 1	Column 2
Stage	Costs
1 Advice on the issue of the certificate under section 94 of the Act	\$320
2 From the giving of the advice on the certificate issued under section 94 of the Act to finalisation of matter by settlement or award of damages	In addition to the \$320 specified for stage 1: (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

Column 1	Column 2
Stage	Costs
	(c) if the settlement amount or award is \$50,001 or more but less than \$100,001—\$3,500 plus 8% of every dollar of the settlement amount or award over \$50,000
	(d) if the settlement amount or award is \$100,001 or more—\$8,200 plus 2% of every dollar of the settlement amount or award over \$100,000

2 Other costs for legal services

- (1) Maximum costs for legal services provided in motor accidents matters may include (in addition to the costs for legal services provided for a stage in the matter, as referred to in clause 1) the costs set out in the 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.

Table

Nature of costs	Maximum costs
Costs associated with a medical dispute under Part 3.4 of the Act, as allowed by the claims assessor	up to \$640 but not exceeding \$1,520 in respect of any one claim, regardless of the number or kind of disputes
Costs associated with a dispute referred to in section 96 of the Act, as allowed by the claims assessor	up to \$760 in respect of any one claim, regardless of the number or kind of disputes
Cost of representation at an assessment conference under section 104 of the Act:	
(a) flat fee	\$510
(b) additional amount, at the claims assessor's discretion, if the conference exceeds 2 hours	up to \$160 per hour for each hour (or part of an hour) in excess of 2 hours

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Nature of costs	Maximum costs
Cost of representation in court, per day:	
(a) advocate other than senior counsel	\$2,000
(b) senior counsel	\$2,790
Cost of conference directly related to an assessment of the claim or a court hearing, per hour (or part of an hour)	\$160

3 Country loadings

- (1) An advocate whose principal chambers or offices are in the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in a town outside that area, to a loading for that town in accordance with the Table to this clause. If proceedings take place at two or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
- (2) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in the Sydney Metropolitan area, to a loading for that town in accordance with the Table to this clause.
- (3) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard at another such town, to a loading for that other town in accordance with the Table to this clause. If proceedings take place at two or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
- (4) For the purposes of this clause, if a town is not included in the Table to this clause, the loading for that town is to be the loading for the nearest town that is so included.
- (5) If an advocate holds more than one brief in respect of proceedings heard at a place on any one day and a loading is applicable under this item, the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable.

Table Town	Loading \$
Albury	915
Armidale	839
Batemans Bay	838
Bathurst	665
Bega	1,011
Bourke	1,444
Broken Hill	1,559
Campbelltown	80
Casino	943
Cessnock	520
Cobar	1,328
Coffs Harbour	739
Condobolin	1,125
Cooma	1,116
Coonamble	1,076
Cootamundra	763
Cowra	587
Deniliquin	983
Dubbo	779
Forbes	779
Glen Innes	739
Gosford	223
Goulburn	550
Grafton	905
Griffith	744
Gundagai	873
Gunnedah	861
Hay	963
Inverell	865
Katoomba	303

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Schedule 1 Amendment

Town	Loading \$
Kempsey	796
Lismore	853
Lithgow	346
Maitland (including East Maitland)	520
Moree	780
Moruya	653
Moss Vale	359
Mudgee	620
Murwillumbah	963
Muswellbrook	552
Narrabri	724
Narrandera	719
Newcastle	520
Nowra	520
Nyngan	1,236
Orange	593
Parkes	801
Penrith	80
Port Macquarie	671
Queanbeyan	666
Singleton	800
Tamworth	776
Taree	620
Tweed Heads	904
Wagga Wagga	689
Wentworth	1,460
Wollongong	329
Yass	586
Young	763

4 Interstate loadings

- (1) An advocate whose principal chambers or offices are in New South Wales is entitled, in respect of proceedings heard or partially heard in another State or Territory, to such reasonable loading as is determined by the court or the claims assessor.
- (2) If an advocate holds more than one brief in respect of proceedings heard at a place on any one day and a court or assessor determines that a loading is applicable under this item, the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable.

Schedule 2 Maximum fees for medico-legal services

(Clause 13)

		\$
Appearances as witnesses		
1	Medical practitioners and other medical professionals called to give evidence other than expert evidence, per hour (or proportionately if not for a full hour) to a maximum of \$495	250
2	Medical practitioners and other medical professionals called to give expert evidence:	
	(a) for the first one and a half hours (including time travelling to the court from the medical professional's home, hospital, place of practice, office or other place and return to that place from the court)	580
	(b) for every full hour after the first hour and a half (or proportionately if not for a full hour)	250
	to a maximum of \$2,060	
3	Travelling allowance in connection with appearance as witness	0.38 per kilometre
4	Accommodation and meals in connection with appearance as witness	reasonable costs

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		\$
Medical reports		
5	Report (in the form, if any, provided for in the MAA Medical Guidelines) made by an attending general practitioner:	
	(a) if a re-examination of the patient is not required	125
	(b) if a re-examination of the patient is required	190
6	Report (in the form, if any, provided for in the MAA Medical Guidelines) made by an attending specialist:	
	(a) if a re-examination of the patient is not required	250
	(b) if a re-examination of the patient is required	330
7	Report (in the form, if any, provided for in the MAA Medical Guidelines) made by a specialist who has not previously treated the patient:	
	(a) if an examination of the patient is not required	330–415
	(b) if an examination of the patient is required	390–685
		(depending, in both cases, on the complexity of the matter, the number of documents to be studied and the amount of research required)
8	Charges for copying medical reports	1 per page
Cancellation fee		
9	Fee if appearance or medical report is not required	No more than 50% of the relevant amount specified in this Table

BY AUTHORITY