



New South Wales

# Workers Compensation Amendment (Legal Costs) Regulation 2009

under the

Workers Compensation Act 1987

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*.

JOSEPH TRIPODI, MP  
Minister for Finance

## Explanatory note

The object of this Regulation is to make a number of amendments to the *Workers Compensation Regulation 2003* (*the Principal Regulation*) in relation to the maximum legal costs recoverable in work injury damages matters. The Regulation:

- (a) amends clause 92 of the Principal Regulation (being a provision that deems certain final offers of settlement to have been made where an insurer wholly denies liability and the matter is not referred to mediation) so that the provision extends to situations where no mediation occurs or such a mediation fails to resolve the matter, and
- (b) makes it clear that references to settlement or award amounts in Schedule 7 to the Principal Regulation (being the schedule of maximum costs for legal services in work injury damages matters) are references to amounts inclusive of weekly compensation payments made, and
- (c) provides for such maximum legal costs in situations where a matter is finalised other than by settlement or judgment in favour of the plaintiff (e.g. by withdrawal by the claimant or dismissal by the court concerned).

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 248 (the general regulation making power) and 337 (Maximum lawyer and agent costs).

## **2009 No 551**

Clause 1            Workers Compensation Amendment (Legal Costs) Regulation 2009

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# **Workers Compensation Amendment (Legal Costs) Regulation 2009**

under the

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### **1 Name of Regulation**

This Regulation is the *Workers Compensation Amendment (Legal Costs) Regulation 2009*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

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## Schedule 1      Amendment of Workers Compensation Regulation 2003

**[1] Clause 92 Deemed offer where insurer denies liability and no mediation occurs or mediation fails**

Omit clause 92 (b). Insert instead:

- (b) no mediation occurs, and

**[2] Clause 92 (e)**

Omit the paragraph. Insert instead:

- (e) the claimant had made a final offer of settlement at mediation of:
  - (i) in the case where the Commission issued a certificate verifying the matters referred to in paragraphs (a) and (b) and the claimant, within one month of the issue of that certificate, made a subsequent offer of settlement to the insurer—the amount of damages specified in that subsequent offer of settlement, or
  - (ii) in any other case—the amount of damages specified in the pre-filing statement served under section 315 of the 1998 Act.

**[3] Clause 92 (2)**

Insert at the end of the clause:

- (2) If:
  - (a) the insurer wholly denies liability, and
  - (b) the matter is referred to mediation, but the matter is not resolved by settlement at the mediation, and
  - (c) the claimant obtains an order or judgment on the claim, costs are to be awarded in accordance with this Subdivision as if:
    - (d) the insurer had made a final offer of settlement at mediation of \$0, and
    - (e) the claimant had made a final offer of settlement at mediation of:
      - (i) in the case where the claimant, within one month of the conclusion of that mediation, made a subsequent offer of settlement to the insurer—the amount of damages specified in that subsequent offer of settlement, or

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Schedule 1 Amendment of Workers Compensation Regulation 2003

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- (ii) in any other case—the amount of the claimant’s final offer of settlement in mediation under the 1998 Act as certified by the mediator under section 318B of the 1998 Act.

**Note.** Persons claiming work injury damages who wish to be awarded costs on a party and party basis should apply to the Workers Compensation Commission for the mediation of the dispute before the matter goes to court. The availability of costs on a party and party basis is subject to the provisions of clause 89 and this clause.

### [4] Schedule 7 Maximum costs for legal services—work injury damages matters

Insert after clause 1 (4) of the Schedule:

- (5) A reference in this Schedule to an amount of a settlement or an award is a reference to the amount inclusive of any weekly payment of compensation under Division 2 of Part 3 of the 1987 Act.

### [5] Schedule 7

Insert after stage 4 in the Work Injury Costs Table A to clause 1:

- |  |   |
|--|---|
| 4A If the matter is referred to mediation and the claim is withdrawn by the claimant after the issue of a certificate as to the mediation under section 318B of the 1998 Act but before the commencement of court proceedings—from service of the pre-filing statement to finalisation of the matter | (a) in the case of a legal practitioner acting for a claimant—nil<br>(b) in the case of a legal practitioner acting for an insurer—\$12,500 |
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### [6] Schedule 7

Insert after stage 6 in the Work Injury Costs Table A to clause 1:

- |  |   |
|--|---|
| 6A If the matter is finalised after the commencement of court proceedings other than by settlement or an award of damages—from service of the pre-filing statement to finalisation of the matter | (a) in the case of a legal practitioner acting for a claimant—nil<br>(b) in the case of a legal practitioner acting for an insurer—\$20,600 |
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**[7] Schedule 7**

Insert at the end of the Work Injury Costs Table B to clause 1:

- |   |  |     |   |
|---|--|-----|---|
| 3 | From the giving of advice on the certificate of mediation (or, if the matter is not referred to mediation, from acceptance of the retainer) to finalisation of the matter other than by settlement or an award of damages. | (a) | in the case of a legal practitioner acting for a claimant—nil   |
|   |  | (b) | in the case of a legal practitioner acting for an insurer—in addition to the \$250 specified for stage 1 (if chargeable)—\$12,500 |