



New South Wales

Motor Accidents Compensation Amendment (Costs and Fees) Regulation 2010

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*.

MICHAEL DALEY, MP
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 accident 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 sections 149, 150 and 228 (the general regulation-making power).

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Clause 1

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1 Name of Regulation

This Regulation is the *Motor Accidents Compensation Amendment (Costs and Fees) Regulation 2010*.

2 Commencement

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

Schedule 1 Amendment of Motor Accidents Compensation Regulation 2005

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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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—\$270
		(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—\$400
		(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 \$670 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—\$670
		(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—\$670 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

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Column 1	Column 2
Stage	Costs
	(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
5	<p>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</p> <p>The total of the following:</p> <p>(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,</p> <p>(b) 2% of the assessment</p>
6	<p>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</p> <p>The total of the following:</p> <p>(a) an amount determined under stage 5,</p> <p>(b) 2% of the settlement or award</p>

Table B

Column 1	Column 2
Stage	Costs
1 Advice on the issue of the certificate under section 94 of the Act	\$330
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 \$330 specified for stage 1: <ul style="list-style-type: none"> (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 (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.

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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 \$670 but not exceeding \$1,600 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 \$800 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	\$530
(b) additional amount, at the claims assessor's discretion, if the conference exceeds 2 hours	up to \$170 per hour for each hour (or part of an hour) in excess of 2 hours
Cost of representation in court, per day:	
(a) advocate other than senior counsel	\$2,110
(b) senior counsel	\$2,950
Cost of conference directly related to an assessment of the claim or a court hearing, per hour (or part of an hour)	\$170

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	965
Armidale	885
Batemans Bay	883
Bathurst	700
Bega	1,065
Bourke	1,521
Broken Hill	1,643
Campbelltown	84
Casino	994
Cessnock	548
Cobar	1,399
Coffs Harbour	779
Condobolin	1,186
Cooma	1,176
Coonamble	1,134
Cootamundra	804
Cowra	619
Deniliquin	1,036

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Town	Loading \$
Dubbo	820
Forbes	820
Glen Innes	779
Gosford	235
Goulburn	579
Grafton	954
Griffith	784
Gundagai	920
Gunnedah	907
Hay	1,015
Inverell	911
Katoomba	319
Kempsey	839
Lismore	878
Lithgow	364
Maitland (including East Maitland)	548
Moree	821
Moruya	688
Moss Vale	379
Mudgee	653
Murwillumbah	1,015
Muswellbrook	581
Narrabri	762
Narrandera	757
Newcastle	548
Nowra	548
Nyngan	1,303
Orange	624
Parkes	844
Penrith	84

Town	Loading \$
Port Macquarie	707
Queanbeyan	701
Singleton	843
Tamworth	817
Taree	653
Tweed Heads	952
Wagga Wagga	725
Wentworth	1,539
Wollongong	347
Yass	617
Young	804

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.

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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 \$520 260
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) 605 (b) for every full hour after the first hour and a half (or proportionately if not for a full hour) to a maximum of \$2,165 260
3	Travelling allowance in connection with appearance as witness 0.40 per kilometre
4	Accommodation and meals in connection with appearance as witness reasonable costs
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 130 (b) if a re-examination of the patient is required 195
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 260 (b) if a re-examination of the patient is required 350

		\$
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	350–435
	(b) if an examination of the patient is required	400–720
		(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
