



New South Wales

Workers Compensation Amendment (Legal Costs) Regulation 2016

under the

Workers Compensation Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987*.

VICTOR DOMINELLO, MP
Minister for Innovation and Better Regulation

Explanatory note

The object of this Regulation is to fix the maximum costs that a legal practitioner is entitled to be paid by or recover from an insurer for providing legal services to a worker in connection with an application for review by the State Insurance Regulatory Authority of certain work capacity decisions made by the insurer.

This Regulation is made under the *Workers Compensation Act 1987*, including sections 44BF and 280 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (Legal Costs) Regulation 2016*.

2 Commencement

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

Schedule 1 Amendment of Workers Compensation Regulation 2016

[1] Part 17 Costs

Insert after Division 3 of Part 17:

Division 3A Costs recoverable in reviews of work capacity decisions

99A Definitions

In this Division:

favourable finding, in relation to a merit review, means a finding or recommendation of the Authority that has the effect of increasing the amount of weekly payments of compensation payable to the worker concerned, as compared with the amount payable as a result of:

- (a) the review decision, or
 - (b) the original work capacity decision that was the subject of the application for internal review,
- whichever is the most recent decision.

merit review means a review of a work capacity decision under section 44BB (1) (b) of the 1987 Act, but only if:

- (a) an internal review of the work capacity decision (the **original work capacity decision**) by the insurer under section 44BB (1) (a) of the 1987 Act (an **internal review**) has been conducted and the worker has been notified of the decision of the insurer with respect to the internal review (the **review decision**), or
- (b) the insurer has not completed an internal review within 30 days after the application for the internal review was made by the worker.

99B Maximum costs

- (1) For the purposes of section 44BF (1) (b) of the 1987 Act, the maximum costs that a legal practitioner is entitled to be paid by, or recover from, the insurer for providing a legal service to a worker in connection with an application or proposed application for a merit review is:

- (a) if the application is made and results in a favourable finding—\$1,800, or
- (b) in any other case—\$1,200.

Note. Division 3 of Part 4.3 of the *Legal Profession Uniform Law (NSW)* requires barristers and solicitors, before providing any services to a client, to provide the client with a written disclosure of the basis of the costs (or an estimate of the likely costs) of services concerned.

- (2) However, subclause (1) is limited as follows:
 - (a) only one amount for costs is payable in respect of the application or proposed application regardless of the number of original work capacity decisions or review decisions to be reviewed under the application or proposed application,
 - (b) only one legal practitioner is entitled to be paid or recover costs in respect of providing the legal service to which subclause (1) applies,
 - (c) without affecting the operation of paragraph (b)—if the worker retains more than one legal practitioner to provide a legal service in connection

with a proposed application for merit review in relation to the same original work capacity decision, only the first legal practitioner so retained who provides the legal service is entitled to be paid or recover costs for providing that service,

- (d) the legal service must be provided within 30 days after the worker was notified of the review decision.
- (3) To avoid doubt, a legal practitioner is entitled to be paid or recover an amount referred to in this clause whether or not the worker makes an application for a merit review in connection with which the legal service was provided.
- (4) A legal practitioner is not entitled to be paid or recover an amount referred to in this clause for providing a legal service in connection with an original work capacity decision made before the commencement of this clause.

[2] Clause 129 GST may be added to costs

Omit “or Division 3 (Costs recoverable in work injury damages matters)” from clause 129 (1).

Insert instead “, Division 3 (Costs recoverable in work injury damages matters) or Division 3A (Costs recoverable in reviews of work capacity decisions)”.