

Motor Accidents Compensation Regulation 2005

[2005-492]



New South Wales

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New South Wales

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Motor Accidents Compensation Regulation 2005



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Motor Accidents Compensation Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note—

This Regulation replaces the *Motor Accidents Compensation Regulation (No 2) 1999* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Motor Accidents Compensation Act 1999*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Fees payable by insurers for certain treatment

4 Definition of “AMA List”

(1) In this Part:

AMA List means the document called *List of Medical Services & Fees* published by the Australian Medical Association and dated 1 November 2004 as amended or replaced, from time to time, by a document recognised by the Authority in accordance with subclause (2).

(2) The Authority may, by notice published in the Gazette, recognise a document, that has been published by the Australian Medical Association, as an amendment to, or replacement of, the AMA List.

5 Application of Part

(1) This Part applies in relation to treatment to which section 56 of the Act applies, being

treatment:

- (a) that is provided to an injured person by a health care professional, and
- (b) in respect of which a fee is specified in the AMA List.

(2) However, this Part does not apply in relation to treatment received by an injured person before 17 December 1999 (being the date of commencement of the *Motor Accidents Compensation Regulation (No 2) 1999*).

6 Maximum amounts payable by insurer for certain treatment

The maximum amount for which an insurer is liable in respect of any claim for fees payable for treatment to which this Part applies is the amount listed, in respect of the treatment concerned, in the AMA List.

Note—

Section 56 does not apply to treatment that is provided at a hospital (whether to an in-patient or an out-patient) and for which any payment is required to be made to the hospital and not to the provider of the treatment. The section also applies to the fee payable to a private hospital for any treatment at the hospital.

Part 3 Costs

Division 1 Unregulated costs

7 Costs not regulated by this Part

Costs referred to in this Part (clause 15 excepted) do not include any of the following:

- (a) fees for accident investigators' reports or accident reconstruction reports,
- (b) fees for accountants' reports,
- (c) fees for reports from health care professionals,
- (d) fees for other professional reports relating to treatment or rehabilitation (for example, architects' reports concerning house modifications),
- (e) fees for interpreter or translation services,
- (f) court fees,
- (g) travel costs and expenses of the claimant in the matter for attendance at medical examinations, the Claims Assessment and Resolution Service or a court,
- (h) witness expenses at the Claims Assessment and Resolution Service or a court.

Division 2 Maximum costs recoverable by legal practitioners

8 Application of Division

(1) This Division is made under section 149 of the Act and applies to the following costs payable on a party and party basis, on a solicitor and client basis or on any other basis:

- (a) legal costs, and
- (b) costs for matters that are not legal services but are related to proceedings in a motor accidents matter.

Note—

Section 149 (2) of the *Motor Accidents Compensation Act 1999* provides that a legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by regulations under section 149.

(2) This Division does not affect costs recovered before 17 December 1999 (being the date of commencement of the *Motor Accidents Compensation Regulation (No 2) 1999*) or for which a bill of costs was issued before that commencement.

Note—

Section 147 (2) of the *Motor Accidents Compensation Act 1999* provides that expressions in Chapter 6 (Costs) of that Act (and consequently expressions used in this Part) have the same meaning as in Part 11 (Legal fees and other costs) of the *Legal Profession Act 1987*, except where otherwise provided. Under the *Legal Profession Act 1987*, “costs” includes barristers’ and solicitors’ fees as well as other items that may be charged by barristers and solicitors (such as expenses and disbursements).

9 Fixing of maximum costs recoverable by legal practitioners

(1) The maximum costs for:

- (a) legal services provided by a legal practitioner to a claimant or to an insurer in any motor accidents matter, and
- (b) matters that are not legal services but are related to proceedings in a motor accidents matter,

are the costs set out in Schedule 1, except as otherwise provided by this Part.

Note—

Division 2 of Part 11 of the *Legal Profession Act 1987* requires barristers and solicitors, before providing any legal 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 legal services concerned.

(2) If there is a change in the legal practitioner retained by a claimant or insurer in a motor accidents matter, the relevant costs are to be apportioned between the legal practitioners concerned.

- (3) If there is a dispute as to such an apportionment, either legal practitioner concerned (or the client claimant or insurer concerned) may refer the dispute to a claims assessor for determination (unless the dispute arose in a matter in which, under section 92 of the Act, the claim is exempt from assessment).
- (4) A legal practitioner has the same right of appeal against a determination made under subclause (3) as the practitioner would have under section 208L or 208M of the *Legal Profession Act 1987* if the determination were a determination made by a costs assessor under Part 11 of that Act in relation to a bill of costs.

10 Excluded matters

- (1) The maximum costs set out in Schedule 1 do not apply in respect of a matter in which, under section 92 of the Act, the claim is exempt from assessment.
- (2) An exclusion under this clause in respect of a matter involving a claim referred to in section 92 (1) (b) of the Act extends to any costs incurred before the matter became exempt.

11 Contracting out—solicitor/client costs

- (1) This clause applies in respect of costs in a motor accidents matter if a legal practitioner:
 - (a) makes a disclosure under Division 2 of Part 11 of the *Legal Profession Act 1987* (sections 180 and 181 excepted) to a party to the matter with respect to the costs, and
 - (b) enters into a costs agreement (other than a conditional costs agreement, within the meaning of that Part, that provides for the payment of a premium on the successful outcome of the matter concerned) with that party as to those costs in accordance with Division 3 of that Part, and
 - (c) before entering into the costs agreement, advises the party (in a separate written document) that, even if costs are awarded in favour of the party, the party will be liable to pay such amount of the costs provided for in the costs agreement as exceeds the amount that would be payable under the Act in the absence of a costs agreement.
- (2) Schedule 1 does not apply to the costs concerned to the extent that they are payable on a solicitor and client basis.

Division 3 Maximum fees recoverable by medical practitioners for medico-legal services

12 Application of Division

- (1) This Division is made under section 150 of the Act and applies in respect of fees for

the provision of medical reports, and appearances as witnesses, by medical practitioners.

Note—

Section 150 (2) of the *Motor Accidents Compensation Act 1999* provides that a medical practitioner is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed under section 150 for the provision of the service.

- (2) This Division does not affect fees recovered before 17 December 1999 (being the date of commencement of the *Motor Accidents Compensation Regulation (No 2) 1999*) or for which a bill was issued before that commencement.

13 Fixing of maximum fees recoverable by medical practitioners for medico-legal services

The maximum fees for providing a service specified in Schedule 2 in relation to any motor accident are the fees set out in that Schedule for that service, except as otherwise provided by this Part.

Division 4 Costs in relation to expert witnesses

14 Limit on costs for expert witnesses

- (1) Costs are not to be included in an assessment or award of damages in respect of any expert witness giving evidence, or providing a report, on behalf of the claimant in relation to a claims assessment or in court proceedings under the Act, except for costs in respect of:
- (a) one medical expert in any speciality (unless there is a substantial issue as to a matter referred to in section 58 (1) (c) or (d) of the Act—in which case costs are payable in respect of 2 medical experts in any speciality relevant to the injury concerned), and
 - (b) 2 experts of any other kind.
- (2) Subclause (1) does not apply if the claims assessor or court concerned agrees that costs are payable in respect of a greater number of expert witnesses in the matter.
- (3) This clause extends to costs incurred in connection with medical assessments.

Division 5 Assessment of costs by claims assessor

15 Claims assessor may assess costs

- (1) In making an assessment and specifying damages under section 94 of the Act in respect of a claim, a claims assessor may include in the assessment an assessment of the claimant's costs (including costs for legal services referred to in Schedule 1 and fees for medico-legal services referred to in Schedule 2) in the matter.
- (2) An assessment of those costs may also be made (whether or not an assessment has

been made under subclause (1)) if a court does not determine a matter after the issue of a certificate under section 94 but remits the matter to the Motor Accidents Claims Assessment and Resolution Service for further assessment.

- (3) In making an assessment under this clause, a claims assessor:
 - (a) may have regard to the amount of any written offer of settlement made by either party to the matter, and
 - (b) must give effect to:
 - (i) any requirement of a court under section 151 (3) of the Act, and
 - (ii) Division 4 of this Part, and
 - (c) must have regard to the matters set out in sections 208A (1) and 208B of the *Legal Profession Act 1987*.
- (4) The amount of any assessment under this clause must not exceed the relevant amounts set out in Schedules 1 and 2.
- (5) A claimant or an insurer (or a legal practitioner retained by a claimant or an insurer in respect of the relevant claim) has the same right of appeal against an assessment made under this clause as the claimant, insurer or legal practitioner would have under section 208L or 208M of the *Legal Profession Act 1987* if the assessment were a determination made by a costs assessor under Part 11 of that Act in respect of a bill of costs.

Division 6 Goods and services tax

16 GST may be added to costs

- (1) Despite the other provisions of this Part, a cost fixed by this Part may be increased by the amount of any GST payable in respect of the service to which the cost relates, and the cost as so increased is taken to be the cost fixed by this Part.
- (2) This clause does not permit a legal practitioner or medical practitioner to charge or recover, in respect of GST payable in respect of a service, an amount that is greater than:
 - (a) 10% of the maximum amount payable under this Part to the legal practitioner or medical practitioner in respect of the legal or other service apart from this clause, or
 - (b) the amount permitted under the New Tax System Price Exploitation law,whichever is the lesser.
- (3) In this clause:

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

New Tax System Price Exploitation law means:

- (a) the New Tax System Price Exploitation Code, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

Part 4 Miscellaneous

17 Current third-party insurance policies issued under *Motor Accidents Act 1988*

- (1) A third-party policy of insurance issued under the *Motor Accidents Act 1988* that has effect for any period on or after 17 December 1999 (being the date of commencement of the *Motor Accidents Compensation Regulation (No 2) 1999*) is taken, in respect of any motor accident occurring on or after that commencement, to be a third-party policy of insurance issued under the *Motor Accidents Compensation Act 1999*.
- (2) Any such policy may be cancelled on or after 17 December 1999 only in accordance with the provisions of the *Motor Accidents Compensation Act 1999*.

Note—

See clause 6 of the *Motor Accidents Compensation Regulation 1999* (now repealed) and section 30 (2) of the *Interpretation Act 1987* in relation to third-party policies of insurance issued under the *Motor Accidents Act 1988* and having effect for any part of the period commencing on 5 October 1999 (and ending on 17 December 1999).

18 Motor vehicles taken to be subject to unregistered vehicle permits

- (1) For the purposes of section 10A of the Act, the following classes of motor vehicles are prescribed:
 - (a) motor vehicles:
 - (i) that are used to perform agricultural tasks (for example, tractors and harvesters), and
 - (ii) in respect of which approval for the placement of identification plates has not been given under section 10A of the *Motor Vehicle Standards Act 1989* of the Commonwealth,
 - (b) motor vehicles:
 - (i) that are designed for use solely over snow, and
 - (ii) in respect of which approval for the placement of identification plates has not been given under section 10A of the *Motor Vehicle Standards Act 1989* of the Commonwealth,

but only during such time as the motor vehicles are within the boundaries of Kosciuszko National Park,

(c) motor vehicles that:

- (i) were manufactured 30 or more years ago, and
- (ii) are used on a road solely in the course of, or as an incident to, an activity of an organisation that is identified in the records of the RTA as an historic vehicle club,

(d) motor vehicles that:

- (i) weigh more than 250 kg when unladen, and
- (ii) are designed or used solely for cutting grass or for purposes incidental to cutting grass,

(e) motor vehicles that:

- (i) are used solely for the purposes of road construction, maintenance or repair, and
- (ii) are not used on a road otherwise than while at, or proceeding to or returning from, the place where the road construction, maintenance or repair is carried out,

(f) motor vehicles that:

- (i) are classified by the RTA as earthwork plant or industrial plant, and
- (ii) are subject to a conditional registration in consequence of that classification,

(g) motor vehicles that are subject to a conditional registration on the basis that they are to be used solely on Stockton Beach for recreation purposes,

(h) motor vehicles that are motorised buggies or carts and are designed and used for the purpose of:

- (i) carrying golfers, spectators or golfing equipment on a golf course, or
- (ii) carrying persons in a holiday resort or retirement village or the like,

(i) motor vehicles that:

- (i) are designed or used solely for the conveyance of a person with a disability that substantially impairs the person's mobility, and
- (ii) weigh more than 110 kg when unladen, and
- (iii) are capable of travelling at more than 10 kilometres an hour,

- (j) motor vehicles that are trackless trains,
 - (k) any other motor vehicles that have been granted full exemption from:
 - (i) motor vehicle tax within the meaning of the *Motor Vehicles Taxation Act 1988* (under section 17 (1) (p) of that Act), or
 - (ii) charges within the meaning of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995* (under section 30 (2) of that Act).
- (2) Section 10A (1) of the Act applies, from 28 February 2003 (being the date of commencement of the *Motor Accidents Compensation Amendment (Unregistered Vehicle Permits) Regulation 2003*), to a vehicle referred to in section 10A (1) (a)-(c) that became subject to a conditional registration on or after 20 May 2002 and before 28 February 2003.
- (3) In this clause, **conditional registration** means a conditional registration under the *Road Transport (Vehicle Registration) Act 1997*.

19 Prescribed authority for access to protected information

For the purposes of section 217 (2) (b) of the Act, the Australian Prudential Regulation Authority is a prescribed authority.

20 Savings

Any act, matter or thing that had effect under the *Motor Accidents Compensation Regulation (No 2) 1999* immediately before the commencement of this Regulation is taken to have effect under this Regulation.

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)
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—\$240 (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 insurer’s offer of settlement under section 82 of the Act	(a) in the case of a legal practitioner acting for a claimant—\$350 (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 \$590 specified for stages 1 and 2 (if chargeable):

- (a) if the settlement amount is \$20,000 or less and the insurer wholly admitted liability for the claim—\$590
- (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—\$590 plus 12% of every dollar of the settlement amount over \$20,000
- (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
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	<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	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>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

Stage

1 Advice on the issue of the certificate under section 94 of the Act

Column 2

Costs

\$300

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	<p>In addition to the \$300 specified for stage 1:</p> <p>(a) if the settlement amount or award is \$20,000 or less—nil</p> <p>(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</p> <p>(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</p> <p>(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</p>
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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 \$600 but not exceeding \$1,400 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 \$700 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	\$475

- (b) additional amount, at the claims assessor's discretion, if the conference exceeds 2 hours up to \$150 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 \$1,750
 (b) senior counsel \$2,550

Cost of conference directly related to an assessment of the claim or a court hearing, per hour (or part of an hour) \$150

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 \$	Town	Loading \$
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Albury	842	Dubbo	716
Armidale	772	Forbes	716
Bateman's Bay	771	Glen Innes	680
Bathurst	612	Gosford	205
Bega	931	Goulburn	506
Bourke	1329	Grafton	833
Broken Hill	1435	Griffith	685
Campbelltown	73	Gundagai	804
Casino	868	Gunnedah	792
Cessnock	479	Hay	886
Cobar	1222	Inverell	796
Coffs Harbour	680	Katoomba	278
Condobolin	1035	Kempsey	733
Cooma	1027	Lismore	766
Coonamble	990	Lithgow	318
Cootamundra	702	Maitland (including East Maitland)	479
Cowra	540	Moree	718
Deniliquin	905	Moruya	601
Moss Vale	331	Port Macquarie	617
Mudgee	571	Queanbeyan	613
Murwillumbah	886	Singleton	736
Muswellbrook	508	Tamworth	714
Narrabri	666	Taree	571
Narrandera	662	Tweed Heads	832
Newcastle	479	Wagga Wagga	634
Nowra	479	Wentworth	1344
Nyngan	1138	Wollongong	303
Orange	545	Yass	539

Parkes	737	Young	702
Penrith	73		

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 \$488	247
2	Medical practitioners and other medical professionals called to give expert evidence: <ol style="list-style-type: none"> (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) 572 (b) for every full hour after the first hour and a half (or proportionately if not for a full hour) 247 to a maximum of \$1,976	
3	Travelling allowance in connection with appearance as witness	0.35 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:	
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	(a) if a re-examination of the patient is not required	121
	(b) if a re-examination of the patient is required	184
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	247
	(b) if a re-examination of the patient is required	326
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	326-410
	(b) if an examination of the patient is required	383-677
		(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