



New South Wales

Motor Accidents Compensation Amendment (Claims) Regulation 2016

under the

Motor Accidents Compensation Act 1999

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Motor Accidents Compensation Act 1999*.

VICTOR DOMINELLO, MP
Minister for Innovation and Better Regulation

Explanatory note

The object of this Regulation is to amend the *Motor Accidents Compensation Regulation 2015* to make further provision with respect to the maximum legal costs recoverable in connection with claims under the motor accidents compulsory third-party insurance scheme established under the *Motor Accidents Compensation Act 1999*. In particular, the Regulation:

- (a) provides for the maximum costs recoverable in connection with a claim that is made by a person under the age of 18 years and in respect of which the relevant settlement amount or award of damages is not more than \$50,000, and
- (b) provides for the maximum costs recoverable on a practitioner and client basis in connection with a claim that is the subject of a costs agreement.

This Regulation is made under the *Motor Accidents Compensation Act 1999*, including sections 149 and 228 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Motor Accidents Compensation Amendment (Claims) Regulation 2016*.

2 Commencement

This Regulation commences on 1 November 2016 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Motor Accidents Compensation Regulation 2015

[1] Clause 5 Application of Division

Omit “in Part 3.2 (Costs disclosure and assessment) of the *Legal Profession Act 2004*, except where otherwise provided in that Chapter” from the note to the clause.

Insert instead “they have when used in relation to legal costs in the legal profession legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*)”.

[2] Clause 6 Fixing of maximum costs recoverable by legal practitioners

Omit “A legal”, “a legal”, “the legal” and “either legal” wherever occurring in clause 6.

Insert instead “An Australian legal”, “an Australian legal”, “the Australian legal” and “either Australian legal”, respectively.

[3] Clause 6 (4)

Omit “section 384 or 385 of the *Legal Profession Act 2004* if the determination were a determination made by a costs assessor under Part 3.2 of that Act in relation to a bill of costs” from clause 6 (4).

Insert instead “section 205 of the *Legal Profession Uniform Law (NSW)* if the determination were a determination of a costs assessor under Division 7 of Part 4.3 of that Law”.

[4] Clause 8 Contracting out—practitioner and client costs

Omit “Division 3 of Part 3.2 of the *Legal Profession Act 2004*” from clause 8 (a).

Insert instead “Division 3 of Part 4.3 of the *Legal Profession Uniform Law (NSW)*”.

[5] Clause 8 (b)

Omit “Division 5”. Insert instead “Division 4”.

[6] Clause 8 (e)

Insert at the end of clause 8 (d):

, and

- (e) the amount paid in resolution of the claim by way of settlement or an award of damages is more than \$50,000.

[7] Clause 8 (2)–(4)

Insert at the end of clause 8:

- (2) However, the maximum costs recoverable in any such matter on a practitioner and client basis are fixed at the amount calculated by subtracting \$50,000 from the amount paid in resolution of the claim.
- (3) For the purposes of subclause (2), the amount paid in resolution of a claim includes any amount payable in connection with the claim on a party and party basis.
- (4) The maximum costs specified in subclause (2) are inclusive of all legal services provided in the course of the claim during the period commencing on the acceptance of the retainer and ending on the resolution of the claim.

[8] Clause 8A

Insert after clause 8:

8A Maximum costs for claims made by children

- (1) This clause applies to a claim if:
 - (a) a certificate has been issued under section 92 of the Act to the effect that the claim is exempt from assessment under Part 4.4 of the Act solely on the ground that the claimant is (on the date on which the certificate is issued) under the age of 18 years, and
 - (b) the amount paid in resolution of the claim is not more than \$50,000.
- (2) The maximum costs for legal services provided to a claimant in connection with a claim to which this clause applies are (unless otherwise ordered by the court):
 - (a) except as provided by paragraph (b)—\$5,000, or
 - (b) if the amount paid in resolution of the claim is more than \$25,000 (but not more than \$50,000) and no associated person has made a claim in respect of the motor accident concerned—\$10,000.
- (3) The maximum costs specified in subclause (2) are inclusive of all legal services provided in the course of the claim during the period commencing on the acceptance of the retainer and ending on the resolution of the claim.
- (4) If there is a change in the Australian legal practitioner retained by a claimant or insurer in connection with a claim to which this clause applies, the relevant costs are to be apportioned between the Australian legal practitioners concerned.
- (5) Any dispute as to such an apportionment may be determined by the court or referred by either Australian legal practitioner concerned (or the client or insurer concerned) to a claims assessor for determination.
- (6) In this clause:

associated person, in relation to a claimant who has made a claim in respect of a motor accident, means any person who:

 - (a) at the time of the accident, was an occupant of the same motor vehicle as the claimant, and
 - (b) has retained to act on the person's behalf in respect of any claim arising from the motor accident the same law practice as the claimant has retained in respect of the claimant's claim.

resolution means any final resolution of a claim, whether by way of settlement, an award of damages or otherwise.

[9] Schedule 3 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on commencement of Motor Accidents Compensation Amendment (Claims) Regulation 2016

Existing claims

- (1) In this clause:
 - the 2016 amendments* means the amendments made to this Regulation by the amending Regulation.
 - the amending Regulation* means the *Motor Accidents Compensation Amendment (Claims) Regulation 2016*.
- (2) The 2016 amendments extend to any claim made on or after the commencement of the amending Regulation even if:
 - (a) the motor accident concerned occurred before that commencement, or
 - (b) the claim is the subject of a costs agreement entered into before that commencement in accordance with Division 4 of Part 4.3 of the *Legal Profession Uniform Law (NSW)*.
- (3) The 2016 amendments do not apply to a claim made before the commencement of the amending Regulation.